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A TREATISE

ON THE

LAW OF COMPANIES,

CONSIDERED AS A BRANCH OF

THE LAW OF PARTNERSHIP,

3786

BY

THE RIGHT HONOURABLE LORD LINDLEY, N. L

A LORD OF APPEAL IN ORDINARY.

SIXTH EDITION

BY

THE HONOURABLE WALTER B. LINDLEY,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

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BOOK IV.

OF THE DISSOLUTION AND WINDING UP OF COMPANIES.

Introductory.

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THE reasons for which, before the Partnership Act, 1890, came into operation, an ordinary partnership was held to be dissolved by the death, lunacy or bankruptcy of any one of its members, or by a transfer of his interest, or by his determination to retire, had no application to companies the shares in which are transferable, and the management of the concerns of which is entrusted by all the shareholders to directors. Nor was there any authority to the effect that companies with transferable shares were or could be dissolved by, or on the happening of, those events which were sufficient to dissolve, or induce the Court to dissolve, an ordinary partnership. The death, bankruptcy or retirement of a shareholder dissolved his connection with the company (*a*), but did not dissolve the bond by which the remaining shareholders were held to each other (*b*).

Some of the reasons which were sufficient to induce the Court to dissolve a partnership were, however, quite as applicable to companies as to ordinary firms, *e.g.*, the impossibility of going on as contemplated (*c*).

Effect of transfer of shares when company is not incorporated.

But notwithstanding the often repeated assertion, that at common law unincorporated companies with transferable shares are mere partnerships, it ought not to be inferred that what was sufficient to dissolve a partnership would also dissolve such a company. The personal relations between

(*a*) See *Jefferys* v. *Smith*, 3 Russ. 158; *Greenshield's case*, 5 De G. & S. 599.

(*b*) See *Thomas* v. *Wells*, 16 C. B. N. S. 508, where, however, the marginal note is scarcely warranted by the judgment.

(*c*) *Electric Telegraph Co. of Ireland*, 22 Beav. 471.

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the members of a company were very different from those which existed between partners, and the power to dissolve depended on those relations. But to have applied the doctrines relating to the dissolution of partnerships to companies would have been to destroy and not to uphold the agreement into which the members had entered. At the same time it was formerly very generally assumed that an unincorporated company with transferable shares might, like an ordinary partnership, have been dissolved at the will of any member, if no time was fixed for its duration; and, although the point does not appear to have been ever actually decided, Lord Eldon, in *Van Sandau* v. *Moore* (*d*), and the late Vice-Chancellor Shadwell in *Wheeler* v. *Van Wart* (*e*), evidently thought that, under ordinary circumstances, unincorporated joint-stock companies might be dissolved by any shareholder on his giving notice to all the other shareholders. Until, however, this view shall have been judicially acted upon, it may be considered as open to question, and, for the reasons given above, the writer ventures to submit that, on principle, it cannot be sustained.

Partnership Act, 1890.

The dissolution of partnerships is now governed by the Partnership Act, 1890 (*f*). This Act applies to all unincorporated companies, except those formed in pursuance of some Act of Parliament, Letters Patent or Royal Charter, or engaged in working mines within and subject to the jurisdiction of the Stannaries (*g*). The preceding remarks are still applicable to unincorporated companies to which the Act does not apply. Unincorporated companies to which the Act does apply will be dissolved by any of the events—*e.g.*, by the death or bankruptcy of any member or, if the duration of the company is for an undefined time, by notice of dissolution by any one member to the others—which dissolve an ordinary partnership. The sections in question (*h*), however, only apply subject to any agreement between the partners, and it may be that even in the absence of any

(*d*) 1 Russ. 463.

(*e*) 2 Jur. 292, and 9 Sim. 193. See, too, *Miles* v. *Thomas*, 9 Sim. 606.

(*f*) 53 & 54 Vict. c. 39. See Part. pp. 557 *et seq.*

(*g*) § 1 and Part. p. 20.

(*h*) §§ 32 & 33.

express agreement, an agreement may be inferred from the nature and constitution of an unincorporated company excluding a general dissolution on the happening of these events, and for the reasons above given such an inference would, it is submitted, be in accordance with sound principle.

Effect where the company is incorporated.

Whatever doubt there may be as to unincorporated companies, there can be none with respect to companies incorporated by the Crown or by special Act of Parliament or by registration. A corporation cannot, by common law, be dissolved by the will of all its members; for a charter cannot be got rid of without the assent of the Crown, nor can an Act of Parliament be got rid of without the assent of the Legislature. What cannot be done by all the members of a body corporate is, *à fortiori*, incapable of being done by less than all, and it consequently follows that, as regards the power of an individual member to insist on a dissolution, there is no analogy at common law between partnerships and incorporated companies. Moreover, as a corporation is distinct from the persons composing it, events which affect those persons individually, *e.g.*, lunacy, death or bankruptcy, do not affect the existence of the body corporate; and here again, therefore, there is no analogy at common law between partnerships and companies which are incorporated (*i*).

Causes of the dissolution of companies.

Adverting, therefore, solely to the general principles applicable to partnerships and corporations, it is submitted:—

1. That a company which is not incorporated, but the shares in which are transferable, is not dissolved by the death or bankruptcy of a shareholder (except as to him), and ought not to be dissolved by the Court, simply because a shareholder desires a dissolution.

2. That such a company may be dissolved, not only in the manner and under the circumstances provided for in its deed of settlement (*k*), but also (by the Court) whenever it can be shown that the business of the company cannot be carried on as intended (*l*).

(*i*) As to the dissolution of corporations, see Grant on Corporations, pp. 295 *et seq.*

(*k*) See *Lyon* v. *Haynes*, 5 Man. & Gr. 405.

(*l*) As to the power of the Court to dissolve unincorporated companies to which the Partnership

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3. That a company which is incorporated by charter may be dissolved by a formal surrender or cancellation of its charter, and in such other way, if any, as is pointed out therein.

4. That a company which is incorporated by Act of Parliament can be dissolved only as therein provided, or by another Act of Parliament.

But as will be seen presently, several Acts of Parliament, commonly called the Winding-up Acts, have been passed expressly for the purpose of providing for the dissolution and winding up of companies, whether unincorporated or incorporated, and whether incorporated by charter, special Act of Parliament or registration. These Acts do not prevent the Court from dissolving unincorporated companies in the exercise of its general jurisdiction (*m*); but they greatly extend its power, especially as regards incorporated companies; and, practically, the law relating to the dissolution and winding up of companies may be said to depend almost entirely on the Acts in question.

Unincorporated companies.

With respect to bankruptcy, it would seem that unincorporated companies may be adjudicated bankrupt, as they are not excepted by the Bankruptcy Act, 1883 (*n*). But it is not probable that recourse will ever be had to proceedings in bankruptcy against them, as they can be much more readily and completely wound up under the Companies Act, 1862, as will be seen hereafter. Incorporated companies cannot now be adjudicated bankrupt (*o*).

Winding-up Acts.

7 & 8 Vict. c. 111.

The first of the Winding-up Acts was 7 & 8 Vict. c. 111, which had three principal objects; viz. (1) to give Courts of Bankruptcy jurisdiction over incorporated, trading or commercial companies, and to enable those Courts to apply the

Act, 1890, applies, see § 35 of that Act, and Part. pp. 565 *et seq.*

(*m*) *Jones* v. *Charlemont*, 16 Sim. 271; *Clements* v. *Bowes*, 17 ib. 167; and Partnership Act, 1890, § 35.

(*n*) 46 & 47 Vict. c. 52, § 123.

(*o*) Ib. As to remitting winding-up proceedings in Ireland to bankruptcy, see the Companies Act, 1862, § 81, *infra*, p. 833, repealed as to England and Wales by the Companies (Winding-up) Act, 1890, § 33.

assets of such companies in payment of their debts; (2) to enable the affairs of a company adjudicated bankrupt to be wound up in Chancery, so that if its assets were not sufficient to pay its creditors in full, the members might be compelled to raise what might be necessary for that purpose by a contribution amongst themselves, and so that the rights of the members, *inter se*, might also be finally adjusted; and (3) to facilitate the discovery of any abuses which might have attended the formation or management of the company, and the causes of its failure, and to authorise prosecutions against its delinquent directors or officers. This statute, after being considerably modified by 11 & 12 Vict. c. 45, and 20 & 21 Vict. c. 78, was finally repealed by the Companies Act, 1862 (see §§ 205—207).

Winding-up Acts of 1848 and 1849.

The next statute passed for winding up companies was 11 & 12 Vict. c. 45, which was shortly afterwards amended by 12 & 13 Vict. c. 108. These Acts were also repealed by the Companies Act, 1862; but they have formed the basis of the law of winding up, and a few observations upon them will not be out of place.

Object of the Winding-up Acts of 1848 and 1849.

The main object of the Winding-up Acts of 1848 and 1849, was to enable companies to be dissolved, and wound up more expeditiously than was possible by means of an ordinary suit in Chancery, and more completely than was possible under the Act of 7 & 8 Vict. c. 111. This latter Act was passed principally for the purpose of enabling creditors to obtain payment of their debts from insolvent companies. The Acts of 1848 and 1849, on the other hand, were passed principally for the purpose of supplying shareholders with a means by which they might relieve themselves from their liabilities to creditors, by having the assets of the company properly got in, and applied in payment of its debts, and by having any deficiency made good by contribution amongst themselves. Under these Acts an order for the winding up of a company was obtained by petition to the Court of Chancery, and was carried into effect by an officer called the official manager, acting under the direction of one of the equity judges (or of a master in Chancery), whose duty it was to determine what debts were payable by the company, who were the persons to

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pay them, what calls, if any, were to be made on such persons for their payment, how the conflicting claims of such persons *inter se* were to be adjusted, how the costs of the winding up were to be provided for, and lastly, how the surplus assets, if any, were to be divided.

Defects of these Acts.

1. Creditor's right to sue at law.

These Acts had several great defects. The first defect was that the creditors were not restrained from pursuing their legal remedies against the shareholders individually; so that, notwithstanding a winding-up order, any shareholder might be, and frequently was, singled out and utterly ruined by a creditor of the company, although if the creditor could have been compelled to wait, he would have received his principal and interest in full from funds provided by a proper contribution from all the members of the company. This defect was in a great measure removed by 21 & 22 Vict. c. 78, under which the creditors could be required to choose a representative (*the creditors' representative*), and be compelled to wait for payment out of the funds raised by contribution.

21 & 22 Vict. c. 78.

2. Creditors not entitled to obtain a winding-up order.

A second defect was that the creditors of a company were not entitled to obtain an order for winding it up. They consequently either sued the shareholders individually, or proceeded against the company in bankruptcy, under 7 & 8 Vict. c. 111. By suing the shareholders individually, the latter were liable to be, and frequently were, utterly ruined; when, under a better machinery, such a result might have been avoided without detriment to the creditors. By proceeding against the company in bankruptcy under 7 & 8 Vict. c. 111, when the same company was being or might be wound up in Chancery under the Acts of 1848 and 1849, the Courts of Chancery and of Bankruptcy were brought into collision, and questions of great difficulty as to the rights of their respective officers arose (*p*).

3. No voluntary winding up.

A third defect was that no provision was made by which a company's affairs could be wound up by the shareholders

(*p*) See on this subject, *Aitchison* v. *Lee*, 3 Drew. 637, and on appeal, 3 Jur. N. S. 95; *London and Eastern Banking Corporation*, 2 De G. & J. 484; *Mitre Assurance Association*, 29 Beav. 1; *Ex parte Collingridge*, 14 Jur. 1129. Such a conflict may possibly still in Ireland arise in the case of unincorporated companies. See *ante*, p. 822.

themselves without the intervention of the Court of Chancery.

4. Expense.

A fourth defect, which was rendered worse rather than better by the institution of a creditors' representative, was the excessive cost of winding-up proceedings.

Acts of 1856 to 1858. 19 & 20 Vict. c. 47. 20 & 21 Vict. c. 14. 21 & 22 Vict. c. 60.

All these defects, except the last, were removed by the Joint-stock Companies Acts, 1856, 1857, and 1858. Under these Acts companies might be wound up at the instance of creditors as well as of contributories; the creditors could not sue the shareholders individually, and could only obtain payment from them by means of a contribution; and the shareholders themselves were enabled, when not pressed by their creditors, to wind up their affairs without having recourse to the expensive machinery of the Court of Chancery. Under these Acts companies with limited liability could only be ordered to be wound up in bankruptcy; other companies in Chancery (*q*).

Companies Act, 1862.

The last-mentioned Acts were themselves repealed by the Companies Act, 1862 (25 & 26 Vict. c. 89), which with the Acts amending it will be found in the Appendix.

Modes of winding up.

The Companies Act, 1862, provides three modes of winding up, viz.—

1, compulsorily, or as it is termed by the Court;

2, voluntarily, without the intervention of any Court (*r*); and,

3, voluntarily, but subject to the supervision of the Court (see §§ 79, 129, and 147).

Companies registered under the Act of 1862, or under the former Acts of 1856—1858 (*s*), may be wound up in any of these three ways. Unregistered companies can only be wound up in the first of them (*t*) (see § 199, cl. 2).

(*q*) See, as to this, *Plumstead Water Co.*, 2 De G. F. & J. 20; *Welsh Potosi Mining Co.*, 27 L. J. Ch. 311.

(*r*) Winding up voluntarily, though only for the purposes of reconstruction or amalgamation, is "liquidation" within the meaning of a clause determining a lease in that event; *Horsey Estate, Ld.* v. *Steiger and Petrifite Co. Ld.* [1899], 2 Q. B. 79, and [1898] 2 Q. B. 259; *Ewart* v. *Fryer* [1901], 1 Ch. 499.

(*s*) *Torquay Bath Co.*, 32 Beav. 581.

(*t*) To this there are certain statutory exceptions. See Industrial and Provident Societies, *infra*, Appendix II., and Benefit Building Societies, *infra*, Appendix III.

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Companies (Winding-up) Act, 1890.

The Companies (Winding-up) Act, 1890, and the rules thereunder, introduced a procedure largely borrowed from that under the Bankruptcy Act, 1883, and the Bankruptcy Rules (*u*) into the winding up of companies, whether registered or not, with a registered office or a principal place of business in England or Wales (*x*). This was effected by changing to some extent the Courts which have jurisdiction to wind up these companies, by subjecting the liquidation of them to the control of the Board of Trade, and by introducing an Official Receiver and a committee of inspection. The Act, so far as it changes the Courts which have jurisdiction to wind up companies in England and Wales, is of general application, but in other respects, with some few exceptions, which will be noticed hereafter (*y*), it applies only to companies in England or Wales which are wound up compulsorily, under an order of Court made on or after the 1st January, 1891 (*z*), the day on which the Act came into operation (*a*). There is, therefore, a broad distinction between the proceedings in the winding up of companies in England and Wales under an order of the Court and the proceedings in a voluntary winding up or in a winding up subject to the supervision of the Court. Indeed, each of these methods requires to be studied separately, but notwithstanding the changes introduced by the Act of 1890, there is so much common to them all, that in order to avoid repetition it will be convenient to consider the subject of winding up generally under the first head, and then to draw attention shortly to the differences between winding up by the

(*u*) For convenience of comparison and reference, a table of the sections of the two Acts and of the rules which correspond, will be found in Appendix V.

(*x*) Companies Act, 1890, §§ 31 (3), 32 (3), and Companies Act, 1862, § 199 (1).

(*y*) § 3, which relates to the transfer of proceedings (see [1894], 1 Ch. p. 742); § 10, which is substituted for § 165 of the Companies Act, 1862; and § 15, which relates to companies the winding up of which has continued for more than a year, and to unclaimed assets in the hands of liquidators (see *Stock and Share, &c., Co.* [1894], 1 Ch. 736), apply to all companies in England or Wales which are being wound up, whether compulsorily, voluntarily, or under supervision, and whether the winding up commenced before or after the Act came into operation.

(*z*) See the Act *passim*, and § 31 (2).

(*a*) § 34.

Court and the other modes of winding up. The dissolution of railway companies will be alluded to in a separate and concluding section.

Malicious petitions.

A company is necessarily seriously injured in its credit by having proceedings taken against it in order to have it wound up; and an action lies against a person who maliciously and without reasonable cause presents a petition for the winding up of a company, and in order to sustain such an action it is not necessary for the company to prove special pecuniary damage (*b*). If a petition is presented for an improper purpose, *e.g.*, for putting pressure on a company, the Court has inherent jurisdiction to prevent such an abuse of process, and may restrain the advertisement of the petition and stay all proceedings under it (*c*).

(*b*) *Quartz Hill Gold Mining Co.* v. *Eyre*, 11 Q. B. D. 674.

(*c*) *A Company* [1894], 2 Ch. 349. As to a contempt of Court by commenting in a newspaper on a pending petition, see *Crown Bank*, 44 Ch. D. 649, and comments on this case in *New Gold Coast Exploration Co.* [1901], 1 Ch. 860.

CHAPTER I.

WINDING UP BY THE COURT.

SECTION I.—THE COURT HAVING JURISDICTION OVER THE WINDING UP OF A COMPANY.

Bk. IV. Chap. 1. Sect. 1.

THE Courts having jurisdiction to wind up a company under the Companies Acts are—

A. In England.

A. In the case of companies registered in England or Wales or if unregistered having a principal place of business there (*a*);

The High Court.

1. The High Court;

(1.) In the case of companies whose capital paid up or credited as paid up exceeds 10,000*l.* (*b*).

(2.) In the case of companies whose capital paid up or credited as paid up does not exceed 10,000*l.*, if situate within the district of a County Court which has been excluded by order of the Lord Chancellor from having jurisdiction under the Companies (Winding-up) Act, 1890, and whose district has been attached to the High Court (*c*).

The Lord Chancellor, in making such an order, is to exclude a County Court from jurisdiction in winding up unless it has jurisdiction in bankruptcy (*d*). By the Bankruptcy Act, 1883, the metropolitan County Courts and the City of London Court (*e*) are excluded from jurisdiction in bankruptcy (*f*). These Courts,

(*a*) Companies (Winding-up) Act, 1890, §§ 31 (3) & 32 (3), and Companies Act, 1862, § 199. Before that Act came into operation, see § 81 of the Act of 1862, and §§ 41–46 of the Act of 1867 (now repealed as to England and Wales by § 33 of the Act of 1890), and the earlier editions of this treatise.

(*b*) Companies (Winding-up) Act, 1890, § 1 (1) & (2).

(*c*) Ib. § 1 (5).

(*d*) Ib.

(*e*) *Real Estates Co.* [1893], 1 Ch. 398.

(*f*) Bankruptcy Act, 1883, §§ 92–96.

therefore, have no jurisdiction under the Companies (Winding-up) Act, 1890; and the High Court, which has exclusive jurisdiction in bankruptcy in these districts which form the London Bankruptcy District, has also exclusive jurisdiction to wind up any company situate therein (*g*).

(3.) In the case of companies which, before the Companies (Winding-up) Act of 1890 came into operation, could be wound up by the Chancery Division of the High Court, under the Companies Acts, and over which jurisdiction is not given to any other Court by the Act of 1890 (*h*).

Judges to exercise the jurisdiction of the High Court.

Subject to general rules, and to orders of transfer made under the authority of the Judicature Acts, the jurisdiction of the High Court under the Companies (Winding-up) Act, 1890, is, as the Lord Chancellor may from time to time by general order direct, to be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who for the time being exercises the Bankruptcy jurisdiction of the High Court (*i*). At present Byrne, J., and Buckley, J., are the judges assigned to exercise this jurisdiction (*k*).

Palatine Courts.

2. The Chancery Courts of the Counties Palatine of Lancaster and Durham;

(*g*) Order of Lord Chancellor, 19th May, 1899, printed in the Appendix, and *The Court Bureau*, W. N. 1891, p. 15, a decision under a former order of 29th November, 1890, now repealed.

(*h*) *North of England, &c., Ins. Ass.* [1900], 1 Ch. 481, the case of a registered company which had no shares and no capital.

(*i*) Companies (Winding-up) Act, 1890, § 2.

(*k*) See the order of the Lord Chancellor, dated 16th December, 1901, printed in the Appendix. At first the jurisdiction was exercised by the judges of the Chancery Division, to whom chambers were attached, under an order of the Lord Chancellor, dated 29th November, 1890. Subsequently, when the Companies (Winding-up) Rules, 1892, came into force, the jurisdiction was exercised by the judge (first Vaughan Williams, J., then Wright, J.) who exercised the Bankruptcy Jurisdiction of the High Court, sitting as an additional judge of the Chancery Division, under the orders of the Lord Chancellor, dated 26th March, 1862, and 6th November, 1897.

In the case of companies situate within the jurisdiction of such Courts whose capital paid up or credited as paid up exceeds 10,000*l.*

This jurisdiction is concurrent with that of the High Court (*n*).

County Court at Truro.

3. The County Court having bankruptcy jurisdiction in Cornwall, *i.e.*, the County Court at Truro;

In the case of companies, whatever may be the amount of their capital and wherever their office may be situate, formed for working mines within the Stannaries, whether exclusively within those limits or not (*o*), which are not shown either to be actually working or to have entered into a contract to work mines beyond those limits, or to be engaged in, or to have contracted to engage in, any other undertaking beyond those limits (*p*).

The Companies (Winding-up) Act, 1890 (*q*), gave jurisdiction in these cases to the Stannaries Court (*r*), but this Court was abolished by the Stannaries Court (Abolition) Act, 1896, and its jurisdiction and powers in regard to the winding up of companies were vested, by an order of the Lord Chancellor, exclusively in the County Court having bankruptcy jurisdiction in Cornwall (*s*), *i.e.*, the County Court at Truro (*ss*).

County Courts.

4. The County Court having jurisdiction under the Companies (Winding-up) Act, 1890 (*t*);

(*n*) Companies (Winding-up) Act, 1890, § 1 (2). See, too, as to the Palatine Court of Lancaster, 53 & 54 Vict. c. 23, and of Durham, 52 & 53 Vict. c. 47.

(*o*) See *New Terras Tin Mining Company* [1894], 2 Ch. 394, and compare, under the Act of 1862, *Penhale and Lomax, &c., Co.*, 2 Ch. 398, and *Silver Valley Mines*, 18 Ch. D. 472, which overruled *East Botallack Mining Co.*, 34 Beav. 82.

(*p*) Companies (Winding-up) Act, 1890, § 1 (4), and cases in the last note.

(*q*) See ib. § 1 (4). Under the Act of 1862, see §§ 81 & 83.

(*r*) See, as to this Court, 32 & 33 Vict. c. 19, amended by 50 & 51 Vict. c. 43.

(*s*) See 59 & 60 Vict. c. 45, the order of the Lord Chancellor under that Act, dated 16th December, 1896, and the County Court (Stannaries Jurisdiction) Rules, 1897.

(*ss*) See the County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, 1899, printed in the Appendix.

(*t*) See, for a list of these County Courts, the County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, 1899. See before the Act, 1890, the

In the case of companies situate within the district of the County Court, or within a district attached to it for the purposes of this jurisdiction by the Lord Chancellor, the capital of which paid up or credited as paid up does not exceed 10,000*l.* (*u*).

Powers of Courts under the Companies (Winding-up) Act, 1890.

Every Court having jurisdiction under the Companies (Winding-up) Act, 1890, to wind up a company has for the purposes of that jurisdiction all the powers of the High Court (*x*); therefore neither a prohibition (*y*) nor *certiorari* (*z*) will lie with respect to matters done by a County Court in the exercise of this jurisdiction; but the powers conferred by the Act must be exercised through the proper officers of the Court (*a*). The Act, moreover, does not enable a County Court to make an order deciding questions, between the company and a stranger, of title to property which arose before the commencement of the winding up (*b*).

Proceedings in wrong Court and transfer of proceedings.

Proceedings in a winding up are not invalidated by being taken in the wrong Court (*c*), and the Companies (Winding-up) Act, 1890, makes provision for the transfer of proceedings at any stage from one Court to another for good cause shown (*d*), and for their retention in the Court in which they have been, though wrongly, commenced (§ 3 (1)), and for the statement of a special case for the opinion of the High Court by a judge of the County Court (§ 3) (3) (*e*).

Special case.

Companies Act, 1867, §§ 41—46, now repealed.

(*u*) Companies (Winding - up) Act, 1890, § 1 (3) & (5) and the order referred to in the last note. For the places and times for the sittings of the County Courts see Companies (Winding - up) Rules, 1890, rr. 18 & 19.

(*x*) Ib., § 1 (6).

(*y*) *New Par Consols, Ld.* (No. 2) [1898], 1 Q. B. 669.

(*z*) *Skinner* v. *Northallerton County Court Judge* [1899], A. C. 439, affirming [1898], 2 Q. B. 680, a decision under the corresponding section of the Bankruptcy Act, 1883, § 100.

(*a*) Ib., § 1 (6), and *Bassett's Plaster Company* [1894], 2 Q. B. 96. See Companies (Winding-up) Rules, 1890, rr. 2 & 20 (a) to 20 (f), and 1892, rr. 34 & 35.

(*b*) *Ilkley Hotel Co.* [1893], 1 Q. B. 248. The provisions of the Bankruptcy Act, 1883, § 102, are wider in this respect.

(*c*) Ib., § 1 (7) *New Terras Tin Mining Co.* [1894], 2 Ch. 394, and under the similar provisions in the Bankruptcy Act, 1883, § 95, see *Re French*, 24 Q. B. D. 63, and *Ex parte May*, 14 Q. B. D. 37.

(*d*) See Companies (Winding-up) Rules, 1890, rr. 8—15, as to the exercise of this power.

(*e*) Including the County Court

Transfer of proceedings.

These provisions do not authorise the transfer of proceedings to a Court which has no jurisdiction in the winding up of companies (*f*), but they apply to proceedings in a voluntary as well as to those in a compulsory winding up (*g*). Whether in any particular case a transfer should be made is a matter of discretion, and an appeal will lie if the judge declines to exercise his discretion (*h*).

Of petition.

A winding-up petition may be transferred before it is heard (*i*).

Building Societies and Industrial and Provident Societies.

Under the Companies Act, 1862, the Court of Chancery, and subsequently the Chancery Division of the High Court had jurisdiction to wind up unincorporated and unregistered building societies and industrial and provident societies (*k*). But prior to the Building Societies Act, 1894, and the Industrial and Provident Societies Act, 1893, the County Courts had exclusive jurisdiction to wind up incorporated building societies (*l*) and industrial and provident societies registered under the Industrial and Provident Societies Act (*m*), though the provisions of the Companies (Winding-up) Act, 1890, applied to the winding-up proceedings in those Courts (*n*). Now, the jurisdiction to wind

of Cornwall exercising the jurisdiction of the old Stannaries Court; see ib. An appeal will lie from the decision of the Judge of the High Court; see *Ex parte Dawes*, 17 Q. B. D. 275, a decision under the Bankruptcy Act, 1883, § 97 (3).

(*f*) See *Real Estates Co.* [1893], 1 Ch. 398; but see now as to Building Societies, *infra*.

(*g*) See *Stock, Share, &c., Co., Ld.* [1894], 1 Ch. p. 742, and *R.* v. *Judge of East Stonehouse County Court*, 65 L. T. 730.

(*h*) *Ex parte Soames*, 13 Q. B. D. 484, a decision under the Bankruptcy Act, 1883, § 97 (3).

(*i*) *Laxon & Co.* [1892], 3 Ch. 31.

(*k*) See *No.* 3 *Midland Counties Ben. Bldg. Socy.*, 4 De G. J. & S. 468; *Queen's Benefit Building Society*, 6 Ch. 815; *Professional, &c., Bldg. Socy.*, ib. 856; *Doncaster Permanent Building Socy.*, 3 Eq. 158; *Cilfoden Benefit Building Society*, 3 Ch. 462; *West London and General, &c., Bldg. Socy.* [1894], 2 Ch. 353; *Alfreton District, &c., Provident Society*, 11 W. R. 301. But see as to the effect of the repeal of the Building Societies Act, 1836, on unincorporated societies certified under that Act and formed after 1856, *Ilfracombe, &c., Building Society* [1901], 1 Ch. 102, and *ante*, p. 185.

(*l*) Building Societies Act, 1874 (37 & 38 Vict. c. 42), § 32 (4), and *Real Estates Co.* [1893], 1 Ch. 398.

(*m*) *London and Suburban Bank* [1892], 1 Ch. 604; *Ferndale Industrial Co-op. Society* [1894], 1 Q. B. 828, and 39 & 40 Vict. c. 45, § 17. As to unregistered societies, see *Rotherhithe, &c., Industrial Society*, 32 Beav. 57.

(*n*) *Portsea Island Building Society* [1893], 3 Ch. 205; *Ferndale Industrial Co-op. Socy.* [1894], 1 Q. B. 828.

up such societies is vested in the Courts which have jurisdiction to wind up companies under the Companies Acts, and the provisions of the Companies (Winding-up) Act, 1890, apply to them (*o*). It is apprehended that for the purpose of determining whether proceedings in the winding up of an incorporated building society should be taken in the High Court or a County Court, regard must be had to the amount standing to the credit of the shares on which no advance has been made, for this seems to correspond most nearly to the capital of a company paid up or credited as paid up (*p*). For further information as to industrial and provident societies and building societies, see App. II. and III.

B. In Ireland.

B. In the case of companies registered in Ireland, or, if unregistered, having a principal place of business there—the Chancery Division of the High Court of Justice in Ireland (*q*).

Proceedings in bankruptcy.

The Chancery Division of the High Court in Ireland, after making an order for winding up a company, may direct all subsequent proceedings for winding up the same to be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the company is situate (Act of 1862, § 81), or, if the company is unregistered, in the place where it has a principal place of business (§ 199, cl. 1).

C. In Scotland.

C. In the case of companies registered in Scotland, or, if unregistered, having a principal place of business there—the Court of Session in either division thereof (*r*). Either division of the Court has power to remit the winding up to any one of the permanent lords ordinary (*s*).

(*o*) Building Societies Act, 1894 (57 & 58 Vict. c. 47), § 8; Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39), §§ 58 & 59; and County Court Rules, Ord. XLIA, r. 12. As to the transfer to the High Court of pending proceedings, see ib. and *Ferndale Industrial Co-op. Socy.* [1894], 1 Q. B. 828. Previously there was no power of transfer to the High Court; see *Real Estates Co.* [1893], 1 Ch. 398.

(*p*) Law of Building Societies, by Mr. Wurtzburg, 3rd ed., p. 239.

(*q*) Companies Act, 1862, §§ 81 & 199, cl. 1. Supreme Court of Judicature Act (Ireland), 1877, § 36.

(*r*) Companies Act, 1862, §§ 81 & 199, cl. 1.

(*s*) Companies Act, 1886, § 6.

Under the older Winding-up Acts, questions of considerable difficulty arose with respect to what companies were within their provisions. Thus the 7 & 8 Vict. c. 111, applied only to commercial and trading companies (*t*); and whether the Winding-up Act of 1848 applied to companies not falling within the same description was by no means free from doubt (*u*). The Winding-up Act of 1849 greatly extended the operation of the Act of 1848. But, notwithstanding the very general word *association*, used in these Acts, and although they extended to associations which were neither partnerships nor quasi-partnerships (*e.g.*, to friendly societies, and to associations having for their object the formation of companies), still associations not having gain for their object, and in which there were no shares and no liability to contribute, were not within them (*x*).

Companies capable of being wound up under the Act of 1862.

Under the Companies Act, 1862 (*y*), the following companies may be wound up by the Court, or subject to its supervision:—

1. All companies registered under the Act, whether formed under it or not (§§ 79, 180, and 196).

2. All companies registered under the Acts of 1856—1858 (see §§ 176 and 177).

3. All other partnerships, associations or companies, except railway companies incorporated by Act of Parliament, consisting of more than seven members, and having a place of business in the United Kingdom (see § 199) (*z*).

What companies can be registered under the Act and what not, has been pointed out in a former page (*a*); and it is only necessary to observe that any company or association of

(*t*) See, as to these words, *Ex parte Burge*, 1 De G. & S. 588; *Ex parte Spackman*, ib. 599.

(*u*) See *Ex parte Burge*, 1 De G. & S. 588; *Ex parte Spackman*, ib. 599, and 1 Mac. & G. 170.

(*x*) See *St. James's Club*, 2 De G. M. & G. 383.

(*y*) The Act of 1890 has not made any alteration in this respect. See *North of England, &c., Ins. Ass.* [1900], 1 Ch. 481.

(*z*) See as to this, *infra*, p. 837. An unregistered insurance company formed between the passing of the Joint Stock Companies Acts, 1856 and 1857, may be wound up under this section. *Bank of London, &c. Ins. Assoc.*, 6 Ch. 421.

(*a*) *Ante*, pp. 154 *et seq.*

persons which is capable of being registered as an existing company may be registered for the purpose only of being wound up (*b*).

Companies specially incorporated.

The circumstance that a company is incorporated by a special Act of Parliament (*c*), or by a grant from the Crown (*d*), does not prevent such company from being wound up under the Companies Act, 1862; even although the property of such company cannot be sold without a special Act of Parliament (*e*); and even though part of its property may be a railway (*f*), and its incorporation be stated in the special Act to be for the public advantage (*g*).

Railway companies.

Whether a railway company incorporated by special Act of Parliament can be registered under the Companies Act, 1862, and then wound up under it, is doubtful (*h*); unregistered railway companies (*i*) are expressly excepted from the Act (see § 199), and can only be wound up under it where they are duly authorised to abandon their railways under the provisions of other Acts of Parliament (*k*).

(*b*) 25 & 26 Vict. c. 89, § 180, and *R.* v. *Registrar of Joint Stock Companies* [1891], 2 Q. B. 598, *ante*, p. 174. See *Northumberland and Durham Banking Co.*, 2 De G. & J. 357, and *Liverpool Borough Bank* v. *Mellor*, 3 H. & N. 551, as to registering banking companies governed by 7 Geo. 4, c. 46, in order that they may be wound up. Both of these cases turned on the Acts of 1856-8.

(*c*) See § 199 and *Exmouth Docks Co.*, 17 Eq. 181; *Wey* v. *Arun Junction Canal Co.*, 4 Eq. 197; *Brentford* v. *Isleworth Tram. Co.*, 26 Ch. D. 527; *Borough of Portsmouth Tram. Co.* [1892], 2 Ch. 367. See, also, under the older Acts, *Isle of Wight Ferry Co.*, 2 Hem. & M. 597; *Electric Telegraph of Ireland*, 22 Beav. 471, and *Ex parte Croysdill*, 7 De G. M. & G. 199.

(*d*) See § 199, and *Free Fishermen of Faversham*, 36 Ch. D. 329, where, however, the Court refused to make a winding-up order; *South London Fishmarket Co.*, 39 Ch. D. 324.

(*e*) *Bradford Navigation Co.*, 10 Eq. 331. This case was appealed, but the appellant was not entitled to be heard, see 5 Ch. 600. See, too, cases in notes (*c*) and (*g*). As to the effect of this in debenture holders' actions, see *ante*, p. 336.

(*f*) *Exmouth Docks Co.*, 17 Eq. 181.

(*g*) *Borough of Portsmouth Tram. Co.* [1892], 2 Ch. 367; *Barton-upon-Humber, &c., Water Co.*, 42 Ch. D. 585.

(*h*) See *ante*, p. 156, and §§ 179, 180, and 196; in *Ennis and West Clare Rail. Co.*, 3 L. R., Ir. 94, such a railway company was wound up. The Court decided the case on the ground that § 192 of the Companies Act, 1862, precluded them from going behind the registrar's certificate.

(*i*) As to what is a railway company, see *ante*, pp. 156, 157.

(*k*) See 32 & 33 Vict. c. 114, § 4; 30 & 31 Vict. c. 127, § 31 *et seq.*; 13 & 14 Vict. c. 83. See *infra*, c. 4.

Bk. IV. Chap. 1. Sect. 2.

Cost-book mining companies.

Companies formed on the cost-book principle for working mines within the jurisdiction of the Stannaries may be wound up under the Companies Act, 1862. The law as to winding up these companies was formerly in a very unsatisfactory state (*l*).

Building Societies, &c.

Building societies, and industrial and provident societies, whether registered under the Acts relating to such societies, or not, may be wound up under the provisions of the Companies Acts (*m*).

Trustees' Savings Bank.

Trustees' savings banks certified under the Trustee Savings Banks Act, 1863, may also be wound up under the Companies Acts (*n*).

Scrip companies.

Scrip companies have been ordered to be wound up under the older Acts (*o*); and it is apprehended that they can also be wound up under the Act of 1862; for although shares transferable to bearer, and not paid up in full, cannot be validly created under the Companies Act, 1862; yet it by no

(*l*) They were, if formed for working mines in Cornwall, wholly excepted from the Act of 1848, as it originally stood, see 11 & 12 Vict. c. 45, § 2; *Ex parte Wyld*, 1 Mac. & G. 1. Provision was, however, afterwards made for winding them up in Chancery in certain specified cases, 12 & 13 Vict. c. 108, § 1; 20 & 21 Vict. c. 78, § 12. See, on this subject, *Bosworthon Mining Co.*, 26 L. J. Ch. 612; *Wheal Anne Mining Co.*, 10 W. R. 330; and as to the right of creditors to oppose, see *Tretoil and Messer Mining Co.*, 2 J. & H. 421. Cost-book companies formed for working mines in Devonshire might be wound up in Chancery even under the Act of 1848, see *South Lady Bertha Mining Co.*, 2 J. & H. 376. Companies formed on the cost-book principle, but not for working mines within the jurisdiction of the Stannaries, were clearly within the Winding-up Acts of 1848 and 1849. See, now, 32 & 33 Vict. c. 19, and 50 & 51 Vict. c. 43, § 28, and *ante*, p. 830.

*Friendly Societies.

(*m*) See *Queen's Benefit Building Soc.*, 6 Ch. 815; *Professional, &c., Building Soc.*, ib. 856; *Sunderland Building Soc.*, 21 Q. B. D. 349, and *ante*, p. 832, and *infra*, Appendixes Nos. 2 and 3. *Secus* if by reason of such non-registration they are illegal, see *Ilfracombe, &c., Building Society* [1901], 1 Ch. 102, *ante*, p. 185. Such societies were within the provisions of the Winding-up Acts, 1848–9. See *St. George's Building Society*, 4 Drew. 154; and as to loan societies, *Ex parte Smith*, 1 Sim. N. S. 165. See *Crown and Cushion Loan Fund Soc.*, 14 Jur. 874. As to the dissolution *of Friendly Societies under the Friendly Societies Act, 1896, see 59 & 60 Vict. c. 25, § 78 *et seq.* Such societies may be converted into registered companies, see § 71.

(*n*) See Trustee Savings Banks Act, 1887, 50 & 51 Vict. c. 47, § 3, and 26 & 27 Vict. c. 87.

(*o*) *Barclay's case*, 26 Beav. 177; *Ex parte Grisewood*, 4 De G. & J. 544.

means follows that a company with such shares cannot be wound up (*p*).

Dissolved companies.

A company which has been dissolved, but the members of which are still under liabilities incurred before the dissolution may be wound up; and orders have been frequently made for winding up companies which have amalgamated with, or have transferred their assets and liabilities to, other companies (*q*).

Companies not within the Act.

The 199th section of the Companies Act, 1862, is expressed in terms sufficiently large to include all unregistered (*r*) societies and corporations of whatever kind, consisting of more than seven members at the date of the petition (*s*), with the single exception of railway companies incorporated by Act of Parliament. But the general scope of the Winding-up Acts, and the mention of a place of business for the purpose of determining the Court which has jurisdiction to wind up unregistered companies, show that the Act only applies to unregistered societies and corporations of the nature of trading companies (*t*). There are, therefore, many corporations aggregate to which the winding-up provisions of the Companies Act, 1862, have no application: *e.g.*, municipal corporations, ecclesiastical corporations aggregate, and societies such as the Royal Society, incorporated by royal charter for the advancement of science (*u*). The property of

(*p*) See *General Co. for Promotion of Land Credit*, 5 Ch. 363, and *Princess Reuss* v. *Boss*, L. R. 5 H. L. 176, As to illegal companies, see *infra*, p. 839.

(*q*) For examples, see *Family Endowment Society*, 5 Ch. 118; and under the older Acts, *Ex parte Phillips*, 3 De G. & S. 3; *Ex parte Dee*, ib. 112; *Warwick and Worcestershire Rail. Co.*, 13 Jur. 651. A dissolved company, which had been adjudicated bankrupt under 7 & 8 Vict. c. 111, might, nevertheless, be wound up under the Acts of 1848-9, see *ante*, p. 825, note (*q*).

(*r*) *I.e.*, unregistered at the date of the petition. *Hercules Ins. Co.*, 11 Eq. 321.

(*s*) *South London Fishmarket Co.*, 39 Ch. D. 324, where, in order to prevent the company from being wound up, the directors endeavoured to get rid of their shares and reduce the number of shareholders below seven. *Bolton Benefit Loan Soc.*, 12 Ch. D. 679. The members must be present members, and neither the representatives of deceased, nor the trustees of bankrupt members are members for this purpose. *Bowling and Welby's Contract* [1895], 1 Ch. 663.

(*t*) *Bristol Athenæum*, 43 Ch. D. 326; *Russell Institution* [1898], 2 Ch. 72.

(*u*) See *Free Fishermen of Faversham*, 36 Ch. D. 329.

all such corporations is liable to their debts, but their members are not personally liable to pay or to contribute to the payment of such debts; nor have the members any rights *inter se* analogous to those which are capable of being adjusted in the course of winding up.

Clubs.

There are also some unregistered and unincorporated societies incapable of being wound up under the Act. An ordinary club is an example (*x*). Such an association has no resemblance to a partnership, quasi-partnership, or inchoate partnership; it is not formed for the division of profit amongst its members; they have no shares, in the sense in which that word is used with reference to partnerships, companies, or associations more or less like them; and even if the members of a club are, as amongst themselves, bound otherwise than in honour to contribute to its debts, there is nothing to prevent any member who has paid his subscription from sending in his resignation, and so getting rid of any such obligation (*y*).

Mutual Marine Insurance Societies.

For similar reasons, it is doubtful whether an unregistered mutual marine insurance society can be wound up where the members are not in arrear in their contributions. Such a society is not a partnership (*z*); and although mutual marine societies have been ordered to be wound up (*a*), the power of the Court to wind them up does not appear to have been contested until too late, and is very doubtful (*b*). The difficulty, however, of winding up such a society otherwise than under the Act is very great.

Mutual Life Insurance Societies.

The Court has power to order a mutual life insurance society to be wound up, if the society be proved to be

(*x*) *St. James's Club*, 2 De G. M. & G. 383, reversing S. C., 20 L. J. Ch. 630. But it seems that a club might be registered under the Act, see § 6 and 30 & 31 Vict. c. 131, § 23.

(*y*) See the last note, and as to suits for winding up clubs, *Richardson* v. *Hastings*, 7 Beav. 301, 323, and 11 ib. 17.

(*z*) Partn. 14.

(*a*) *E.g.*, *Arthur Average Association*. See 3 Ch. D. 522, and 10 Ch. 542; *Shields Marine Ins. Assoc.*, 5 Eq. 368; *London Marine Ins. Assoc.*, 8 Eq. 176; *Ex parte Phillips*, 3 De G. & S. 3. See the special report made by the Master in this case, 14 Jur. 929.

(*b*) See *Ex parte Hargrove*, 10 Ch. 542; *Arthur Average Association*, 3 Ch. D. 522; *London Marine Ins. Assoc.*, 8 Eq. 176.

insolvent, though instead of so doing it may, if it thinks fit, reduce the amounts of the contracts of the society (*c*).

Literary and Scientific Societies.

Literary and scientific societies which are not formed for purposes of gain, and are governed by the Literary and Scientific Institutions Act, 1854, if not registered under the Companies Acts cannot be wound up under those Acts: for though such societies may be in the nature of joint stock companies (*d*), they are not in any sense trading companies (*e*).

Trade Unions.

Trade unions cannot be registered or wound up under the Companies Acts (*ee*).

Illegal companies.

Illegal companies (*f*) cannot be wound up by the Court at the instance of themselves or of their own members (*g*); nor at the instance of creditors who had notice of the illegality when their debts were contracted (*h*). It is doubtful whether other creditors can obtain an order to wind up such a company (*i*); but there is nothing to prevent an illegal company being wound up by its own members without any judicial assistance. Moreover, it must be remembered that if a company is illegal simply because it is not registered, the impediment to being wound up can be removed by registration.

Companies registered here, but carrying on business abroad.

A company formed and registered under the Act can be wound up under it, although the subscribers of the company's memorandum of association may be all foreigners resident abroad, and although the objects of the company may be

(*c*) 33 & 34 Vict. c. 61, §§ 21 & 22. *Great Britain Mutual Life Assurance Soc.*, 16 Ch. D. 246; 19 Ch. D. 39; 20 Ch. D. 351. And see *Rudow* v. *Great Britain Mutual Life Ass. Soc.*, 17 Ch. D. 600.

(*d*) *The Russell Institution* [1892], 2 Ch. 72, and *In re Jones*, ib. 83.

(*e*) *The Bristol Athenæum*, 43 Ch. D. 326.

(*ee*) See 34 & 35 Vict. c. 31, § 5, amended by 39 & 40 Vict. c. 22, § 2.

(*f*) As to which, see *ante*, p. 180 *et seq.*

(*g*) See *Barclay's case*, 26 Beav. 177; *Fenn's case*, 4 De G. M. & G. 295; *Ex parte Longworth's Executors*, Johns. 465, affirmed on appeal, 1 De G. F. & J. 17. See, also, the next two notes.

(*h*) See, as to this, *Padstow Total Loss Association*, 20 Ch. D. 137; *South Wales Atlantic Steam Ship Co.*, 2 Ch. D. 763, and the cases in the next note.

(*i*) See *Ilfracombe, &c., Building Socy.* [1901], 1 Ch. 102, and compare *South Wales Atlantic Steamship Co.*, 2 Ch. D. 763, and *Ex parte Hargrove*, 10 Ch. 542, with the observations of Jessel, M. R., and Brett, L. J., in *Padstow Total Loss Association*, 20 Ch. D. 137, at pp. 143 & 146. It should be borne in mind that winding up is the modern substitute for an action and sci. fa., as to which, see *ante*, p. 391.

mainly the transaction of business abroad (*k*). It has been doubted whether the Court can wind up a company registered under the Act, but shown by its own memorandum and articles to be formed exclusively of foreigners resident abroad for the transaction of business abroad (*l*); but admitting that such a company ought never to have been registered, its continued existence as a registered company cannot apparently be stopped except through the machinery of a winding-up order.

Foreign companies.

A company formed and registered abroad, and having a branch office (*m*) in this country, but not registered here, may be ordered to be wound up under the Companies Act, 1862 (*n*); and the fact that steps are being taken to wind up the company in the country in which the company is registered does not affect the jurisdiction of the English Court (*o*), though in such cases it is usual to make the winding up here ancillary to that in the country of its domicil (*p*). But the writer apprehends that it is not competent for any Court in this country to dissolve a corporate body created by a competent foreign authority; and therefore that a foreign corporation cannot be wholly wound up and dissolved in this country. At the same time, if a foreign incorporated company were registered, the corporate body created by registration might be wound up and dissolved without any undue exercise of jurisdiction.

(*k*) *General Co. for Promotion of Land Credit*, 5 Ch. 363, and *Princess of Reuss* v. *Bos*, L. R. 5 H. L. 176.

(*l*) *Princess of Reuss* v. *Bos*, L. R. 5 H. L. 176.

(*m*) In *Lloyd Générale Italiano*, 29 Ch. D. 219, Pearson, J., refused to make an order for winding up a foreign company which had no branch office in England, but carried on business here by agents. Compare the cases in the next note, and see further as to foreign companies, *infra*, Appx. No. 1.

(*n*) *Commercial Bank of India*, 6 Eq. 517; *Commercial Bank of South Australia*, 33 Ch. D. 174; *Matheson Brothers, Limited*, 27 Ch. D. 225. And see the following cases under the older Acts: a Spanish Rail. Co., *Ex parte Turner and James*, 3 De G. & S. 127, and 2 Mac. & G. 169; a German Mining Co., *Ex parte Chippendale*, 4 De G. M. & G. 19; a Mexican Mining Co., *Barclay's case*, 26 Beav. 177; a Calcutta Bank, see *Ex parte Watson*, 3 De G. & S. 253, where, however, no order was made; an Indian Rail. Co., *Ex parte Wolesey*, 3 De G. & S. 101; a Belgian Rail. Co., *Ex parte Moss*, 14 Jur. 754.

(*o*) *Matheson Brothers, Limited*, 27 Ch. D. 225; *Commercial Bank of South Australia*, 33 Ch. D. 174.

(*p*) *Commercial Bank of South Australia*, 33 Ch. D. 174; *English, Scottish, and Australian, &c., Bank* [1893], 3 Ch. p. 394.

Scotch and Irish companies.

A company registered under the Companies Acts with its registered office in Scotland or Ireland, cannot be wound up by the English Courts (*q*).

Validity of order improperly made.

If a company which ought not to be ordered to be wound up is nevertheless ordered so to be, the validity of the winding-up order can only be questioned (at least by the company or a contributory) by an appeal (*r*). Such an order, however, is not a judgment *in rem* and is not binding on strangers (*s*).

Other cases on the older Acts.

The following note of other decisions on the Acts of 1848–9 is appended for reference:—

The general words partnerships, associations, and companies, were held to include projected, but abortive, railway and other companies, provisionally registered under 7 & 8 Vict. c. 110 (*t*). But as the subscribers to abortive companies are neither partners nor quasi-partners, it followed, that, unless they had done something whereby they had, as between themselves, incurred a liability to contribute to the demands to which they were respectively subject, an order to wind up a company, never in fact formed, was useless; for, except in the case supposed, there could be no contributories (*u*).

Irish companies were specially provided for by 4 & 5 Vict. c. 45, § 17 (*x*).

Scotch companies were not subject to the Acts at all (*y*).

SECTION III.—PERSONS AT WHOSE INSTANCE A WINDING-UP ORDER WILL BE MADE.

Under the Companies Act, 1862 (§ 82), an order for winding up a company, may be applied for by all or any of the following persons, viz.:—

1. The company;
2. One or more of its creditors;
3. One or more of its contributories;

(*q*) *Scottish Joint Stock Trust*, W. N. 1900, p. 114.

(*r*) See the *Arthur Average Association*, 3 Ch. D. 522; 10 Ch. 542; and *Padstow Total Loss Association*, 20 Ch. D. 137.

(*s*) *Bowling and Welby's Contract* [1895], 1 Ch. 663.

(*t*) *Bright* v. *Hutton*, 3 H. L. C. 341; *Ex parte James*, 1 Sim. N. S. 140; *Ex parte Woolmer*, 5 De G. & S. 117, and 2 De G. M. & G. 665; *Ex parte Barber*, 1 Mac. & G. 176; *Ex parte Turner and James*, 3 De G. & S. 127, and 2 Mac. & G. 169; *Ex parte Besley*, 2 Mac. & G. 176; *Ex parte Holinsworth*, 3 De G. & S. 7.

(*u*) See *Ex parte James*, 1 Sim. N. S. 140; *Ex parte Besley*, 3 Mac. & G. 287.

(*x*) *Ex parte Fisher*, 3 De G. & S. 116.

(*y*) 11 & 12 Vict. c. 45, § 127, and 12 & 13 Vict. c. 108, § 40.

Under the Companies Winding-up Act, 1890,

4. The Official Receiver in the case of any company in England or Wales which is being wound up voluntarily or under supervision (§ 14); and

Under the Companies Act, 1900,

5. Any shareholder in a company limited by shares and registered on or after the 1st January, 1901, if default is made in filing the report or holding the statutory meeting required by § 12 of that Act (§ 12 (8)) (*z*).

Every order made on any petition operates in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory (Act of 1862, § 82).

A company required to be registered is not entitled, whilst unregistered, to apply for an order to be wound up (*a*).

Creditors.

Any creditor (*b*) of a company is entitled to petition for a winding-up order, and it is not necessary that his debt should be of any particular amount; but, as will be pointed out in the next section, the evidence which he must adduce in support of his petition depends on the amount of his debt (see *infra*, p. 862).

Debt incurred during a voluntary winding up.

A debt due from the company under an agreement entered into by the liquidator in its voluntary winding up, is sufficient to support a petition for a compulsory order by the person to whom the money is due (*c*).

Garnishee order.

A person who has obtained a garnishee order directing a company to pay him a debt due by it to a third person, is not a creditor of the company (*d*); if he wishes to present a

(*z*) No other person has a right to petition under this section. As to the section, see *ante*, pp. 467 and 473.

(*a*) See § 210, and *Waterloo Assurance Co.*, 31 Beav. 586. In this last case the company was ordered to be wound up on a contributories' petition; but the company was not illegal: it had been formed and registered under 7 & 8 Vict. c. 110.

(*b*) As to the right of an equitable creditor to present a petition, see *Combined Weighing Machine, &c., Co.*, 43 Ch. D. 99; *Law Courts Chambers Co.*, W. N. 1889, p. 189, and compare cases *infra*, note (*o*). See, as to disputed debts, *infra*, p. 861; a person claiming unliquidated damages, and whose claim is disputed, is not entitled to an order, *Pen-y-van Colliery Co.*, 6 Ch. D. 477; *Gold Hill Mines*, 23 Ch. D. 210.

(*c*) *Bank of South Australia* (No. 2) [1895], 1 Ch. 578. Compare ib. (No. 1) [1894], 3 Ch. 722.

(*d*) *Combined Weighing Machine, &c., Co.*, 43 Ch. D. 99.

petition to wind it up he must first bring an action on the order, and obtain judgment against the company (*e*).

A landowner who has a claim against a company for purchase-money and compensation in respect of lands taken by the company under the Lands Clauses Act, is not a creditor of the company until a conveyance has been executed (*f*). An assignee of a debt is entitled to petition (*g*), and an executor of a creditor may present a petition before he has obtained probate of the will (*h*). A secured creditor may also present a petition without giving up his security or losing any of his rights (*i*); he may do so while an action to enforce his security is pending, and even after having obtained the appointment of a receiver (*k*).

Debenture holders.

A debenture holder is entitled to present a petition if the company is indebted to him, and either principal (*l*) or interest (*m*) is in arrear (*n*). In *Uruguay Central & Hygueritas Rail. Co. of Monte Video* (*o*), the holder of an instrument described as a mortgage bond was held not entitled to a winding-up order, on the ground that he was not a creditor of the company, the covenant to pay being entered into by the company with the trustees of a covering deed, and not with the bond-holders themselves. In *Exmouth Docks Co.* (*p*),

(*e*) *Pritchett* v. *English and Colonial Syndicate* [1899], 2 Q. B. 428.

(*f*) *Milford Docks Co.*, 23 Ch. D. 292.

(*g*) *London and Birmingham Alkali Co.*, 1 De G. F. & J. 257.

(*h*) *Masonic and General Life Assurance Co.*, 32 Ch. D. 373.

(*i*) *Moor* v. *Anglo Italian Bank*, 10 Ch. D. 681.

(*k*) *Borough of Portsmouth Tram. Co.* [1892], 2 Ch. 362.

(*l*) *E.g.*, *Borough of Portsmouth Tram. Co.* [1892], 2 Ch. 362.

(*m*) *E.g.*, *Western of Canada Co.*, 17 Eq. 1; *St. Thomas's Dock Co.*, 2 Ch. D. 116; *Chapel House Colliery Co.*, 24 Ch. D. 259; *Olathe Silver Mining Co.*, 27 Ch. D. 278, where the petitioner was a mortgagee by deposit of a debenture payable to bearer.

(*n*) *Melbourne Brewery and Distillery* [1901], 1 Ch. 453, where the principal money was not due and no interest was in arrear. See, too, *W. Powell & Sons*, W. N. 1892, p. 94, where a petition by the holder of a bill of exchange not yet matured was dismissed. Compare *Australian Joint Stock Bank*, W. N. 1897, p. 48, where the principal and some arrears of interest were due, but payment had been deferred under a scheme of arrangement.

(*o*) 11 Ch. D. 372, explained in *Olathe Silver Mining Co.*, 27 Ch. D. 278.

(*p*) 17 Eq. 181, debentures issued under a Special Act.

and *Herne Bay Waterworks Co.* (*q*), it was held that the rights of the debenture holders were by the statute, under which the debentures were issued, limited to obtaining the appointment of a receiver, and that they were therefore not entitled to a winding-up order. But these cases have since been doubted, and it has been decided that if a holder of such debentures has obtained judgment against the company, and exhausted his statutory remedies as a debenture holder without obtaining payment of his debt, he is entitled to present a winding-up petition (*r*).

Policy holders.

Under the Life Assurance Companies Act, 1870, the holder of a policy granted by a life assurance company may petition for the winding up of the company if it is insolvent, although the policy is not yet due (*s*).

Contributories.

Alleged contributories.

The right of a contributory to present a petition to wind up the company cannot be excluded or limited by the company's articles of association (*t*). The meaning of the word contributory will be examined hereafter; for the present purpose the term includes an alleged contributory (see § 74). But the legislature has not said what sort of allegation is to be regarded as sufficient; an admission by the petitioner that he is a contributory in respect of at least one share, seems, however, to be necessary (*u*). It may, however, be remarked, that several of the older cases in which orders were made under the Winding-up Act of 1848 on the petition of the subscribers to abortive companies could not be supported at the present day, upon the ground that the petitioners in them were contributories; if those cases are to be supported at all, it must be upon the ground that the petitioners claimed to be contributories, without being so in reality (*x*).

(*q*) 10 Ch. D. 42, debentures issued under the Companies Clauses Consolidation Act, 1845.

(*r*) *Borough of Portsmouth Tram. Co.* [1892], 2 Ch. 362, debentures issued under the Companies Clauses Consolidation Act, 1845.

(*s*) 33 & 34 Vict. c. 61, § 21. A policy-holder includes an annuitant, see § 2. See, also, 35 & 36 Vict. c. 41, § 4, as to subsidiary companies.

(*t*) *Peveril Gold Mines, Ld.* [1898], 1 Ch. 122.

(*u*) *Ship's Case*, 2 De G. J. & Sm. 544; *Times Fire Ass. Co.*, 30 Beav. 596; *Continental Bank*, W. N. 1867, pp. 114 and 178; 15 W. R. 548, and 16 L. T. 112.

(*x*) That the petitioners in *Ex parte Capper*, 3 De G. & S. 1; *Ex*

Companies Act, 1867, § 40.

In order, however, to put a stop to the improper practice of buying shares in a company, simply with a view to obtain a right to petition to wind up the company, it is in substance enacted that no contributory shall be capable of presenting a winding-up petition, unless the members are reduced below seven; or unless the petitioner is an original allottee of the shares in respect of which he petitions; or unless he or his wife, or a trustee for him or her has held and been registered in respect of such shares for six months during the eighteen months next before the presentation of the petition; or unless he has acquired them by the death of their former owner (*y*). Registration for six months is enough (*z*), and if the company has been ordered to register the petitioner, he need not be registered in fact (*a*). It is apprehended that this section does not apply to a shareholder petitioning under § 12 of the Companies Act, 1900 (*aa*).

Member in arrear of calls.

A winding-up order may be made at the instance of a contributory who has not paid his calls (*b*); but as a general rule the Court will not hear the petition until the calls have been paid, or the amount due paid into Court (*c*).

Holders of fully paid-up shares in limited companies.

A holder of fully paid-up shares in a limited company is not entitled to petition for a winding-up order unless he can show that the company is in such a state of solvency that there is a reasonable probability of sufficient assets being left for the shareholders to give him a tangible interest in having the company wound up (*d*). The fact that there would be a

parte Cooke, ib. 148, and *Ex parte Holinsworth*, ib. 7, would not at the present time be held to be contributories, see *Bright* v. *Hutton*, 3 H. L. C. 341.

(*y*) 30 & 31 Vict. c. 131, § 40. The petition need not, though it had better, state the fact, *City and County Bank*, 10 Ch. 470; *Glendower Steamship Co.*, W. N. 1899, p. 14.

(*z*) *Wala Wynaad Indian Gold Mining Co.*, 21 Ch. D. 849.

(*a*) *Patent Steam Engine Co.*, 8 Ch. D. 464. *Secus* if no such order has been obtained, *Re A Company* [1894], 2 Ch. 349.

(*aa*) See *ante*, p. 842.

(*b*) *Diamond Fuel Co.*, 13 Ch. D. 400, explaining *Steam Stoker Co.*, 19 Eq. 416; *European Life Ass. Soc.*, 10 Eq. 403. Compare the older cases referred to *infra*, p. 847, note (*p*).

(*c*) *Crystal Reef Gold Mining Co.* [1892], 1 Ch. 408, where the Court accepted an undertaking by the petitioners to submit to any order the Court might make as to the payment of calls. The petition was dismissed, and the petitioner ordered to pay the costs.

(*d*) *Thomas Edward Brinsmead & Sons* [1897], 1 Ch. p. 420; *Diamond*

surplus if calls were made in respect of shares which had been issued at a discount, was in one case held to be insufficient to entitle the petitioner to an order (*e*). When this case was decided it was doubtful whether calls could be made in respect of such shares, except for the benefit of creditors; but it is now settled that calls can be made for the purpose of adjusting the rights of the contributories (*f*). It is apprehended that holder of fully paid-up shares is entitled to petition under § 12 of the Companies Act, 1900, whether the company is solvent or not (*ff*).

Shareholder not on register.

A person who has been declared by the Court to be entitled to be a shareholder, but who, owing to the negligence of the company, has not been registered, is entitled to petition for a winding up (*g*).

Scrip-holders.

A scrip-holder is not entitled to petition for a winding-up order unless he is, or admits himself to be, a contributory (*h*); or unless there are surplus assets which he has a right to have distributed.

Building societies.

Under the Building Societies Act, 1874, any member authorised by three-fourths of the members present at a general meeting of the society specially called for the purpose, and any judgment creditor for not less than fifty pounds, may petition to have the society wound up, either voluntarily under the supervision of the Court, or by the Court; but no other person may do so (*i*).

Fuel Co., 13 Ch. D. 400; *Rica Gold Washing Co.*, 11 Ch. D. 36, modifying the earlier cases; *Tumacacori Mining Co.*, 17 Eq. 534; *National Savings Bank*, 1 Ch. 547; *London Armoury Co.*, 10 Jur. N. S. 962; *Lancashire Brick and Tile Co.*, 34 Beav. 330; *Patent Artificial Stone Co.*, ib. 185; *Cheshire Patent Salt Co.*, 1 N. R. 533.

(*e*) *Pioneers of Mashonaland Syndicate* [1893], 1 Ch. 731. The probability of recovering monies from directors or promoters may be sufficient, see *Rica Gold Washing Co.*, 11 Ch. D. 36; *Thomas Edward Brinsmead & Sons* [1897], 1 Ch. p. 420; *Haycraft Gold, &c., Co.* [1900], 2 Ch. 230.

(*f*) See *Welton* v. *Saffery* [1897], A. C. 299, settling the doubt raised by Lord Herschell in *Ooregum Gold, &c., Co.* v. *Roper* [1892], A. C. 125.

(*ff*) See *ante*, p. 842.

(*g*) *Patent Steam Engine Co.*, 8 Ch. D. 464. *Secus* if no order has been obtained, *Re A Company* [1894], 2 Ch. 349.

(*h*) *Littlehampton Steam Ship Co.*, 34 Beav. 256, and 2 De G. J. & S. 521, Turner, L. J., dissenting. See under the older Acts, *Ex parte Capper*, 3 De G. & Sm. 1.

(*i*) 37 & 38 Vict. c. 42, § 32, sub-s. 4, and see *Sunderland Building Soc.*, 21 Q. B. D. 349.

Industrial and Provident Societies.

The Industrial and Provident Societies Act, 1893, contains no provisions as to the persons who are entitled to present a petition to wind up societies governed by that Act; the provisions of the Companies Acts therefore apply (*k*).

Trustee Savings Banks.

A petition to wind up a trustee savings bank may be presented by any person who is authorised by the Companies Acts to present a petition to wind up a company, or by the Commissioners for the reduction of the National Debt, or by a Commissioner appointed under the Trustee Savings Bank Act, 1887 (*l*).

The following persons were held entitled to petition under the Winding-up Acts of 1848 and 1849; and the decisions in their cases may be usefully referred to on questions arising under the Act of 1862:—

A scrip-holder of a provisionally registered railway company, who had not signed either the subscribers' agreement or the parliamentary contract (*m*);

An original subscriber for shares in an abortive company, and a member of its provisional committee (*n*);

A member of the managing committee of an abortive company, who had been compelled to pay the charges of the company's solicitor, but who had not taken any shares (*o*);

A member of a company who had not paid his calls (*p*);

A manager of a cost-book company, who was a creditor of the company for advances made by himself (*q*);

A contributory resident abroad (*r*);

The executors of a deceased member, though not members themselves (*s*);

Past members (*t*);

Where a petition was presented by a shareholder who had entered into an arrangement with his creditors under the Act, 7 & 8 Vict. c. 70, an order was refused, the trustees of the deed of arrangement not having been served (*u*).

(*k*) 56 & 57 Vict. c. 39, § 58.

(*l*) 50 & 51 Vict. c. 47, § 3.

(*m*) *Ex parte Capper*, 3 De G. & S. 1. See *ante*, note (*h*).

(*n*) *Ex parte Holinsworth*, 3 De G. & S. 7.

(*o*) *Ex parte Cooke*, 3 De G. & S. 148.

(*p*) *Ex parte Lawton*, 1 K. & J. 204; *Ex parte Hodsell*, 19 L. J. Ch. 234. See, too, *Sherwood Loan Co.*, 1 Sim. N. S. 165. Compare these with the cases cited *supra*, p. 845, note (*b*).

(*q*) *Ex parte Sedgwick*, 2 Jur. N. S. 949.

(*r*) *Ex parte Latta*, 3 De G. & S. 186. But he may be compelled to give security for costs, ibid.

(*s*) *Re Norwich Yarn Co.*, 12 Beav. 366.

(*t*) *Times Fire Assurance Co.*, 30 Beav. 596.

(*u*) *Ex parte Walter*, 3 De G. & S. 2.

SECTION IV.—THE CIRCUMSTANCES UNDER WHICH A COMPULSORY WINDING-UP ORDER WILL BE MADE.

Circumstances under which a company may be wound up.

A company registered under the Act may be wound up by the Court, *i.e.*, compulsorily under the following circumstances (§ 79) :—

a) When registered.

1. Whenever the company has passed a special resolution, requiring the company to be wound up by the Court;

2. Whenever the company does not commence its business here or abroad (if its object be to carry on business abroad) within a year from its incorporation, or suspends its business for the space of a whole year (*x*);

3. Whenever the members are reduced in number to less than seven;

4. Whenever the company is unable to pay its debts;

5. Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

And in the case of companies limited by shares and registered on or after the 1st January, 1901—

6. Whenever default is made in filing the report or holding the statutory meeting required by § 12 of the Companies Act, 1900 (*y*).

b) When unregistered.

An unregistered company (except a railway company) may be wound up if it has not less than seven members (*z*) (§ 199, cl. 3)—

1. Whenever the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs (*a*);

2. Whenever the company is unable to pay its debts;

3. Whenever the Court is of opinion that it is just and equitable that the company should be wound up.

(*x*) See *Capital Fire Insurance Association*, 21 Ch. D. 209; *Tumacacori Mining Co.*, 17 Eq. 534; *Metropolitan Railway Warehouse Co.*, 15 W. R. 1121, L. J. Abandoning part of the business is not enough, *Norwegian Titanic Iron Co.*, 35 Beav. 223. Nor is a temporary suspension of business with the consent of a large majority of shareholders, *Middlesborough Assembly Rooms Co.*, 14 Ch. D. 104.

(*y*) See Comp. Act, 1900, § 12 (8), and *ante*, pp. 467 and 473. Only shareholders have the right to petition in this case, see ib.

(*z*) *Bolton Benefit Loan Society*, 12 Ch. D. 679; *South London Fish Market Co.*, 39 Ch. D. 324; *Bowling and Welby's Contract* [1895], 1 Ch. 663.

(*a*) See *Family Endowment Soc.*, 5 Ch. 118, which had transferred its business to another company.

When the company is being wound up voluntarily or under supervision.

By the Companies (Winding-up) Act, 1890, whenever a company, with its registered office, or, if unregistered, with a principal place of business in England or Wales, is being wound up voluntarily or under the supervision of the Court, the Court may make an order on the petition of the Official Receiver that the company be wound up compulsorily, if satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of creditors or contributories (*aa*).

Defunct companies.

Further, by the Companies Act, 1880 (43 Vict. c. 19, § 7), the registrar of joint stock companies is empowered, after the necessary notices have been given, to strike off the register the name of any company which he has reasonable cause to think has ceased to carry on business, and on notice of this being published in the *Gazette*, such company is dissolved. By the Companies Act, 1900 (§ 26), this power is extended so as to enable the registrar to strike off the register any company which is being wound up, if he has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up and the returns required to be made by the liquidator have not been made for six consecutive months after notice by the registrar demanding the returns has been sent.

Inability to pay debts.

The Act of 1862 declares the circumstances under which a company is to be deemed unable to pay its debts, both where the company is registered (§ 80), and where it is not (§ 199, cl. 4). The circumstances mentioned are, in the case of registered companies, in substance as follows (§ 80):

(*a*) In case of registered companies.

1. Whenever a creditor for more than 50*l*. has served on the company a demand, under his hand, requiring the company to pay the sum due, and the company has for three weeks afterwards neglected to pay, or secure, or compound for the same to the creditor's satisfaction;

2. Whenever execution, issued by a judgment creditor against the company, is returned unsatisfied;

3. Whenever it is proved, to the satisfaction of the Court, that the company is unable to pay its debts (*b*).

(*aa*) Companies (Winding-up) Act, 1890, §§ 14 and 31–33. Compare Comp. Act, 1862, § 145, and *infra*, pp. 859, 860, and 864.

(*b*) This lets in any evidence of insolvency, *Flagstaff Silver Mining Co. of Utah*, 20 Eq. 268; *Globe New Patent Iron, &c., Co.*, ib. 337.

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In the case of unregistered companies, two other circumstances are added (c) (§ 199, cl. 4), viz.:

b) In case of unregistered companies.

1. Whenever a member is sued for a debt of the company, and notice of the proceeding is served on the company, and the company has not within ten days paid, secured, or compounded for the debt, or procured the proceeding to be stayed, or indemnified the defendant to his satisfaction against the same, and the costs thereof;

2. Whenever, in the case of a company working a mine within the jurisdiction of the Stannaries, a customary decree or order absolute for the sale of the effects of the mine has been made, in a creditor's suit, in the Vice-Warden's Court (d).

Railway company.

Further, in the case of an unregistered railway company there must be a warrant for the abandonment of the railway (e).

Discretion of Court.

In connection with the above enactments, it is necessary to advert to section 86, which empowers the Court, upon hearing a petition for a winding-up order, to dismiss the same with or without costs, adjourn the hearing conditionally or unconditionally, or make any interim or other order that it deems just (f).

Moreover, by sections 91 and 149, the Court is empowered to have regard to the wishes both of the contributories and of the creditors, and to have meetings called in order to ascertain such wishes (g). It is obvious, from the foregoing provisions, that in all cases the Court has a very wide discretion as to what it will do when applied to for an order to wind up. But wide as the discretion is, there are certain principles by which the Court is guided, and which reduce the practice on this subject to reasonable certainty. These principles will be best expounded by considering first the circumstances under which the Act

(c) The substance only of the section is attempted to be here given.

(d) The Court is now abolished, and its jurisdiction vested in the County Courts of Cornwall. See Stannaries Abolition Act, 1896, 59 & 60 Vict. c. 45, and the order of the Lord Chancellor thereunder dated 16th December, 1896.

(e) 32 & 33 Vict. c. 114, § 4.

(f) See, too, Comp. Act, 1900, § 12 (8), as to petitions under that section.

(g) This power can be exercised on the hearing of a winding-up petition, *Western of Canada Oil, &c., Co.*, 17 Eq. 1. As to misleading the Court, see *Septimus Parsonage & Co.* [1901], 2 Ch. 424, and *infra*, p. 861.

declares that a winding-up order can be made, and secondly the circumstances by which the Court is usually influenced in exercising its discretion as to the course it will pursue.

1. *Circumstances under which a winding-up order can be made.*

No company can be wound up by the Court except in the cases specified above (*h*), and of these the only two which have given rise to difficulty are thus expressed: 1. "*Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts.*" 2. "*Whenever the Court is of opinion that it is just and equitable that the company should be wound up.*"

1. Inability pay debts.

The difficulty as to insolvency has been to determine whether prospective debts ought to be taken into account. This point was discussed in the case of the *European Life Assurance Society* (*i*), and it was there decided that by inability to pay debts was meant inability to pay debts actually due and payable; and that liabilities under subsisting policies were not to be reckoned: and this construction of the clause in question may be taken to have been correct. But it has been since enacted that in considering the solvency of life insurance companies, the Court is to take into account the contingent or prospective liabilities under policies and annuities, and other existing contracts (*k*). See *infra*, p. 856.

European Life Assurance Society.

Position of capital.

In considering the question of insolvency, uncalled-up capital must be estimated as an asset (*l*); and unless there is evidence to show that it cannot be recovered it will be estimated at its full nominal value (*m*). On the other hand, the paid-up capital of a company is not a debt within the meaning of the statute (*n*); it is not a debt of the company in any legal sense.

2. Just and equitable to wind up.

Assuming a company not to be insolvent, circumstances may nevertheless exist to render it just and equitable to wind it up. It is obvious, from the context of the Act, that the words, "whenever the Court is of opinion that it is just and equitable

(*h*) *Langham Skating Rink Co.*, 5 Ch. D. 669; *Cork Shipping and Mercantile Co.*, 7 L. R. Ir. 148.

(*i*) 9 Eq. 122; *Bristol Joint Stock Bank*, 44 Ch. D. p. 710.

(*k*) 33 & 34 Vict. c. 61, § 21.

(*l*) There is a liability to calls in respect of shares issued at a discount, see *Pioneers of Mashonaland Syndicate* [1893], 1 Ch. 731; and *Welton* v. *Saffery* [1897], A. C. 299.

(*m*) *European Life Ass Soc.*, 9 Eq. 122. See, as to insurance companies, *infra*, p. 856.

(*n*) See § 80, and § 199, cl. 4; and *ante*, p. 544.

does not affect the question, for a majority however large has no power to force a minority to embark in a business into which it has never undertaken to enter (*z*). Moreover, if it has become impossible for the company to carry on its main business, it will not be allowed to carry on, as its sole business, one which it had power to carry on only as auxiliary to its main business (*a*); and general words and powers in a company's memorandum of association will be restricted by the real object of the company (*b*).

Deadlock in management.

A complete deadlock as to the management of the company's affairs has been considered a sufficient ground for making a winding-up order (*c*).

Company not prosperous.

The greatest difficulty, however, is felt in cases where there are no such circumstances as those just alluded to; but where a company is not prospering.

Where a company's assets are sufficient to meet not merely its actual debts, but also its existing liabilities, the Court will not speculate on the possible consequences of continuing the business of the company, and will decline to wind it up (*d*).

The circumstance that a company which is solvent will, if not wound up, probably contract further liabilities, which it will be unable to pay, is not of itself sufficient to induce the Court to make a winding-up order (*e*). Nor is the fact that shares have been issued at a discount sufficient (*f*). But if a company's assets, including its uncalled-up capital, are not sufficient to discharge its existing liabilities, then, although the company might be able to pay its existing debts, the Court will deem it

(*z*) *Haven Gold Mining Co.*, 20 Ch. D. 151; *German Date Coffee Co.*, ib., p. 169; *Suburban Hotel Co.*, 2 Ch. 737. See, also, *Diamond Fuel Co.*, 13 Ch. D. 400; *Thomas Edward Brinsmead & Sons* [1897], 1 Ch. 45 and 406; and *Varieties, Limited* [1893], 2 Ch. 235.

(*a*) *Crown Bank*, 44 Ch. D. 641; *Bristol Joint Stock Bank*, ib. 703; *Amalgamated Syndicate* [1897], 2 Ch. 600. Compare *Kronand Metal Co.*, W. N. 1899, p. 14.

(*b*) *Crown Bank* and *Amalgamated Syndicate, ubi supra.* But as to looking at the prospectus to construe the memorandum, see [1897], 1 Ch. p. 56.

(*c*) *Sailing Ship Kentmere Co.*, W. N. 1897, p. 58.

(*d*) *Langham Skating Rink Co.*, 5 Ch. D. 669, noticed p. 856; *Suburban Hotel Co.*, 2 Ch. 737; *Joint Stock Coal Co.*, 8 Eq. 146; *European Life Ass. Soc.*, 9 Eq. 122; *Professional, &c., Building Soc.*, 6 Ch. 856; *Planet Benefit Building Soc.*, 14 Eq. 441.

(*e*) See cases in the last note.

(*f*) *Pioneers of Mashonaland Syndicate* [1893], 1 Ch. 731.

just and equitable to order the company to be wound up (*g*), and a combination of circumstances may be sufficient to induce the Court to make such an order when none of the circumstances taken alone would be sufficient (*h*).

Fraud in the promotion of the company.

The fact of there having been fraudulent representations in the prospectus, or fraud in the promotion of the company, is not alone sufficient, for the shareholders may waive the fraud and decide to go on (*i*); but in questions of this kind the large powers of investigation which the Court is now able to exercise, if a compulsory order is made, are very material, and if the true facts are concealed from the shareholders, or if the persons guilty of the fraud have control of the company, the Court may think it just and equitable to make the order (*k*).

Difference between limited and unlimited companies when company is not prosperous.

As regards impossibility of going on at a profit, a difference exists between a limited and an unlimited company. If a company is unlimited, and its capital is all paid up and spent, and the company is making no profit, and is getting worse and worse, a shareholder is entitled to decline to run further risk, and to have the company wound up (*l*). But this reasoning does not apply to a limited company, and consequently the Court has on several occasions declined to wind up a limited company under circumstances which would have induced it to wind up the company had it been unlimited (*m*). Thus in the

(*g*) See the judgment in the *European Life Ass. Soc.*, 9 Eq. 122.

(*h*) See *Thomas Edward Brinsmead & Sons* [1897], 1 Ch. 406; *Diamond Fuel Co.*, 13 Ch. D. 410.

(*i*) *Haven Gold Mining Co.*, 20 Ch. D. 154, and compare cases in the next note.

(*k*) See Companies (Winding-up) Act, 1890, § 8; *Thomas Edward Brinsmead & Sons* [1897], 1 Ch. 45 and 406; *Varieties, Limited* [1893], 2 Ch. 235; and *General Phosphate Corporation*, W. N. 1893, p. 142. See, too, *Haycraft Gold, &c., Co.* [1900], 2 Ch. 230. In the case of fraud on persons outside the company, the section is not of the same weight; see *Medical Battery Co.* [1894], 1 Ch. 444.

(*l*) Partnership, p. 574, and *ante*, p. 551. The Partnership Act, 1890, § 35 (*e*), and *Jennings* v. *Baddeley*, 3 K. & J. 78; *Norwich Yarn Co.*, 12 Beav. 366; *Electric Tel. of Ireland*, 22 Beav. 471. Compare *Professional, &c., Building Soc.*, 6 Ch. 856, where the petitioners were under no liability.

(*m*) See, in addition to the case in the text, *London Suburban Bank*, 6 Ch. 641; *Suburban Hotel Co.*, 2 Ch. 737; *Joint Stock Coal Co.*, 8 Eq. 146. In each of these cases, the company was not prospering, but the majority of members desired to go on. Compare *Australian Joint Stock Bank*, W. N. 1897, p. 48, where the company did not oppose the order.

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Langham Skating Rink Co.

Langham Skating Rink Company (*n*) the Court refused to order a company to be wound up, although the shares were not paid up in full and there was considerable evidence to show that profit was not to be expected. The company was not prospering and had abandoned most of the objects for which it had been formed; but it was not insolvent, and a majority of members opposed the petition.

Limited companies with reserved capital.

A limited company whose capital has been divided into two parts under the Companies Act, 1879, one part of which has been paid up and the other part of which can only be called up in the event of a winding up, occupies an intermediate position between a limited and an unlimited company; and, if the whole paid-up capital has been exhausted and the company can only carry on business at a loss, a winding-up order will be made on the petition of a contributory, although liabilities to the extent of the reserved capital may not have been incurred (*o*).

Life Insurance companies.

With respect to Life Assurance companies, it has been specially enacted as follows (*p*) :—

33 & 34 Vict. c. 61, §§ 21, 22.

"The Court may order the winding up of any company, in accordance with the Companies Act, 1862, on the application of one or more policyholders or shareholders, upon its being proved to the satisfaction of the Court that the company is insolvent, and in determining whether or not the company is insolvent, the Court shall take into account its contingent or prospective liability under policies and annuity and other existing contracts; but the Court shall not give a hearing to the petition until security for costs for such amount as the judge shall think reasonable shall be given, and until a *primâ facie* case shall also be established to the satisfaction of the judge (*q*); and in case of a proprietary company having an uncalled capital of an amount sufficient, with the future premiums receivable by the company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time (in the discretion of the Court), to enable the uncalled capital, or a sufficient part thereof, to be called up; and if, at the end of the original or any extended time for which the proceedings shall have been suspended, such an amount shall

(*n*) 5 Ch. D. 669. The petition was a contributory's petition. See the last note, and compare *Diamond Fuel Co.*, 13 Ch. D. 400.

(*o*) *Bristol Joint Stock Bank*, 44 Ch. D. 703.

(*p*) 33 & 34 Vict. c. 61, § 21. This Act includes Mutual Life Assurance companies, see *Great Britain Mutual Life Assurance Society*, 16 Ch. D. 246. For the basis on which annuities and policies are to be valued, see Life Assurance Companies Act, 1872, 35 & 36 Vict. c. 41, § 5, and *infra*.

(*q*) This is not necessary where the company has passed a resolution to wind up voluntarily, *British Alliance Ass. Corp.*, 9 Ch. D. 635.

not have been realised by means of calls as, with the already invested assets, to be equal to the liabilities, an order shall be made on the petition as if the company had been proved insolvent."

"The Court, in the case of a company which has been proved to be insolvent, may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as the Court thinks just, in place of making a winding-up order" (*r*).

Reduction of contracts.

If the Court proceeds under this latter section the contracts to be included in the scheme for reduction are, in the absence of special circumstances, those in existence at the date of the presentation of the petition for winding up; and if there are *two* classes of policies, participating and non-participating, they must be reduced *pari passu*. The claims of policy-holders and annuitants, which have matured into debts before the date of the presentation of the petition, and all outside debts, must be paid in full by the company; and the company is entitled to receive in full payment of all monies then due to it, whether in respect of arrears of premium or otherwise (*s*).

2. *Circumstances influencing the discretion of the Court.*

Assuming that circumstances are proved to exist under which a company may be ordered to be wound up, it by no means follows that it will be ordered so to be (*t*). The Court, as already observed, has in all cases a wide discretion as to the course it will take (p. 850); but in the exercise of this discretion a marked difference exists between cases in which a winding-up order is sought by creditors and those in which it is sought by contributories.

a) Creditors' petitions.

a) Creditors' petitions.

When a petition is presented by a creditor for an order to wind up a company, and his debt is not disputed, or has been established by legal proceedings, and there is evidence that the company is unable to pay its debts within the meaning of the statute, it is almost a matter of course to make the order (*u*); but if other creditors oppose the petition and it appears that the petitioning creditor will gain nothing by a winding-up

(*r*) 33 & 34 Vict. c. 61, § 22; *Great Britain Mutual Life Assurance Society*, 16 Ch. D. 246. If a winding-up order has been made, it must be discharged before the Court proceeds under this section.

(*s*) *Great Britain Mutual Life Assurance Society*, 19 Ch. D. 39, affd. 20 Ch. D. 352.

(*t*) See this very clearly laid down in *Metropolitan Saloon Omnibus Co.*, 5 Jur. N. S. 922.

(*u*) See *Western of Canada Oil Co.*, 17 Eq. 1; *E. Bishop & Sons, Ld.* [1900],

order, the petition may be dismissed at once (*x*), or ordered to stand over (*y*). Since the Companies (Winding-up) Act, 1890, came into operation, the powers of the Court to inquire into malpractices under a compulsory order are considerably larger than under a voluntary winding-up or a supervision order (*z*), and if a *primâ facie* case calling for investigation is made out (*a*), this is a matter which may be taken into consideration in determining whether or not the petitioner will gain anything by a winding-up order (*b*). The opposition of the company, or the wishes of the contributories, go for little in such a case (*c*): nor does the fact that the contributories desire to wind up voluntarily (*d*) usually induce the Court to abstain from making a compulsory order (*e*). The smaller, moreover, the assets of the company, the less reason is there to attend to the wishes of the contributories; for where a company is clearly insolvent, its assets may be regarded as belonging rather to its creditors than to its members (*f*).

Creditors divided in opinion.

If, however, the Court is satisfied by proper evidence that the majority of the creditors of a company are of opinion that a compulsory order to wind up is not desirable, the Court will give effect to their wishes (*g*); although where there had

2 Ch. 254; *Krasnapolsky Restaurant, &c., Co.* [1892], 3 Ch. 174, and the cases cited *infra*, notes (*e*) and (*g*).

(*x*) *Uruguay Central, &c., Rail. Co. of Monte Video*, 11 Ch. D. 372; *Chapel House Colliery Co.*, 24 Ch. D. 259; *The Free Fishermen of Faversham*, 36 Ch. D. 329; *Ilfracombe Permanent, &c., Building Soc.* [1901], 1 Ch. 102. *Semble, Greenwood & Co.* [1900], 2 Q. B. 206, goes too far, see [1901], 1 Ch. p. 109.

(*y*) *Great Western Coal Consumers' Co.*, 21 Ch. D. 769; *Olathe Silver Mining Co.*, 27 Ch. D. 278.

(*z*) See § 8 and *National Debenture, &c., Corp.* [1891], 2 Ch. p. 518.

(*a*) See cases *infra*, p. 860, note (*t*), and *Thomas Edward Brinsmead & Sons* [1897], 1 Ch. 45 & 406.

(*b*) *Krasnapolsky Restaurant, &c., Co.* [1892], 3 Ch. 174.

(*c*) See the next four notes.

(*d*) *General Rolling Stock Co.*, 34 Beav. 314.

(*e*) However, in the *Brighton Hotel Co.*, 6 Eq. 339, the Court gave the company time to make some arrangement for paying its creditors. So, also, in *Western of Canada Oil Co.*, 17 Eq. 1; *St. Thomas' Dock Co.*, 2 Ch. D. 116. This indulgence was, however, refused in *Home Ass. Ass.*, 12 Eq. 114.

(*f*) *Isle of Wight Ferry Co.*, 2 Hem. & M. 597.

(*g*) *Olathe Silver Mining Co.*, 27 Ch. D. 278; *Chapel House Colliery Co.*, 24 Ch. D. 259; *Great Western Coal Consumers' Co.*, 21 Ch. D. 769; *Uruguay Central and Hygueritas Rail. Co. of Monte Video*, 11 Ch. D. 372; *West Hartlepool Iron Works Co.*, 10 Ch. 618; *Western of Canada*

been ample time to consult them, and they had not been called together, and had not expressed their wishes in such a way as to satisfy the Court, the opposition of a considerable number of them did not induce the Court either to refuse the order, or even to direct the petition to stand over until the creditors could be called together (*h*).

Foreign company.

The fact that the company is substantially a foreign company, and that there will be great difficulty in winding it up, is not sufficient to justify a refusal to make a winding-up order (*i*); and a winding-up order may be made even though winding-up proceedings are pending abroad (*k*). If these proceedings are pending in the country of the company's domicil, it is usual to make the winding up here ancillary to them (*l*).

Company in voluntary liquidation.

The voluntary winding up of the company does not deprive a creditor of his right to have the company wound up by the Court, but, unless the general body of creditors desires a compulsory order (*m*), he must satisfy the Court that his rights will be prejudiced by the voluntary winding up (*n*). This is the case even when the company goes into voluntary liquidation after the presentation of the petition (*o*); in such a case, if a compulsory order is made, the winding up will commence as from the date of the presentation of the petition, and if the creditor shows a *primâ facie* case of a misapplication of assets between that date and the date of the commencement of the

Oil Co., 17 Eq. 1; *St. Thomas' Dock Co.*, 2 Ch. D. 116; *Langley Mill Steel, &c., Co.*, 12 Eq. 26, and the next note, and *ante*, note (*u*).

(*h*) See *Oriental Commercial Bank*, W. N. 1866, 283. *The Imperial Mercantile Credit Ass.*, ib. 257, was decided on a contributory's petition; and *Gen. Rolling Stock Co.*, 34 Beav. 314.

(*i*) *Gen. Co. for Promoting Land Credit*, 5 Ch. 363, and *Princess of Reuss* v. *Bos*, L. R. 5 H. L. 176. See *ante*, p. 839.

(*k*) *Commercial Bank of South Australia*, 33 Ch. D. 174; *Matheson Brothers, Limited*, 27 Ch. D. 225.

(*l*) *English, Scottish, and Australian, &c., Bank* [1893], 3 Ch. p. 394, and *Commercial Bank of South Australia*, 33 Ch. D. 174.

(*m*) *E. Bishop & Sons, Ld.* [1900], 2 Ch. 254; *West Hartlepool Iron Works Co.*, 10 Ch. 618; Comp. Act, 1862, §§ 91 & 149.

(*n*) Comp. Act, 1862, § 145; *United Service Co.*, 7 Eq. 76, and cases in the following notes. Compare *State of Wyoming Syndicate* [1901], 2 Ch. 431, and *Haycraft Gold, &c., Co.* [1900], 2 Ch. 230, where the resolutions were invalid.

(*o*) *New York Exchange, Limited*, 39 Ch. D. 415.

voluntary winding up (*p*), this may be sufficient proof that his rights will be prejudiced by it (*q*). If there has been fraud or dishonesty in the promotion or formation of the company, or by any director or officer of the company in relation to it since its formation, the continuance of the voluntary winding up will deprive a creditor of the benefit of the larger powers of investigation which exist when a compulsory order is made (*r*); if, therefore, he establishes a *primâ facie* case of fraud or dishonesty in these matters (*s*), this may be sufficient proof of prejudice to induce the Court to make a compulsory order (*t*). If at the hearing the petitioner or the majority of creditors wish for a supervision, instead of a compulsory order, the Court may make such an order and impose such restrictions on the powers of the liquidator as appear to be necessary for the protection of the creditors (*u*). If a supervision order only is asked for, the Court cannot make a compulsory order (*x*). The existence of a voluntary winding up for the purposes of a reconstruction which has failed does not throw so great a difficulty in the way of a compulsory order as an ordinary winding up might do (*y*).

Petition by Official Receiver in such cases.

Under the Companies Winding-up Act, 1890, § 14, the Official Receiver may present a petition in these cases, and the Court, if satisfied that the voluntary winding up or the winding up under supervision cannot be continued with due regard to the interests of the creditors or contributories, may make a compulsory order. Every case in which the powers of the voluntary liquidator are, in the opinion of the Court, shown to be insufficient for the purposes of the winding up

(*p*) See as to this *infra*, § 6 (1).

(*q*) *New York Exchange, Limited*, 39 Ch. D. 415.

(*r*) See Companies (Winding-up) Act, 1890, § 8.

(*s*) Frauds on the outside public are not within the purview of § 8. *Medical Battery Co.* [1894], 1 Ch. 444.

(*t*) *Watson & Sons, Ld.* [1891], 2 Ch. 55; *National Debenture, &c., Corp.* [1891], 2 Ch. 505, where the company was being wound up voluntarily under supervision; *Russell Cordner & Co.* [1891], 3 Ch. 171. See, too, *Haycraft Gold, &c., Co.* [1900], 2 Ch. 230, and *Varieties, Limited* [1893], 2 Ch. 235, where the petitioner was a contributory.

(*u*) See *Watson & Sons, Ld.* [1891], 2 Ch. 55, where a committee of inspection was appointed, see the order, ib. p. 62; *Russell Cordner & Co.* [1891], 3 Ch. 171.

(*x*) *New Oriental Bank Corporation* [1892], 3 Ch. 563.

(*y*) *Gutta Percha Corporation* [1900], 2 Ch. 665.

in so far as the interests of creditors or contributories are concerned, is within this section, but a strong case must be made out to justify the interference of the Court (*z*).

Contempt of Court by misleading shareholders.

If, when a petition for a compulsory order is pending, directors, shareholders, or others induce the members of the company by fraud or misrepresentation to pass a resolution for a voluntary winding up, in order to embarrass the Court and prevent it from making a compulsory order, they will be guilty of contempt of Court, and may be punished accordingly (*a*).

Assignment of petitioning creditor's debt.

Again, if the petitioning creditor has assigned or incumbered his debt, so as to have little, if any, interest in it, the Court will be reluctant to make an order at his instance (*b*): and if he has assigned his debt after the petition has been presented, the Court will refuse the order (*c*).

Company for public purposes.

Further, if a company has been specially incorporated for public purposes, the Court will not order it to be wound up at the instance of a creditor unless the Court is satisfied that he cannot otherwise obtain payment (*d*).

Disputed debt.

Moreover, it was never intended that a petition to wind up a company should be had recourse to for the purpose of trying a disputed debt (*e*): and if the petitioner's debt is *bonâ fide* disputed the Court will either dismiss the petition at once (*f*), or at least not make a winding-up order, until the debt has

(*z*) *Jubilee Sites Syndicate* [1899], 2 Ch. 204.

(*a*) *Septimus Parsonage & Co.* [1901], 2 Ch. 424.

(*b*) *European Banking Co.*, 2 Eq. 521, where the petition was dismissed.

(*c*) *Paris Skating Rink Co.*, 5 Ch. D. 959.

(*d*) *Exmouth Docks Co.*, 17 Eq. 181, where the petitioning creditor was an unpaid debenture holder, and no application had been made for a receiver. And see per Fry, L. J., 36 Ch. D. 347, and compare *Borough of Portsmouth Tram. Co.* [1892], 2 Ch. 367.

(*e*) In *Cercle Restaurant Castiglione Co.* v. *Lavery*, 18 Ch. D. 555; *Niger Merchants Co.* v. *Capper*, ib. 557 note, and *Cadiz Waterworks Co.* v. *Barnett*, 19 Eq. 182, injunctions were granted to restrain the presentation of a petition, and in *Gold Hill Mines*, 23 Ch. D. 210, the petition was dismissed on motion, and all proceedings under it stayed. As to malicious petitions, see *ante*, p. 827.

(*f*) *Gold Hill Mines*, 23 Ch. D. 210; *Anglo-Bavarian Steel Ball Co.*, W. N. 1899, p. 80; *London and Paris Banking Corporation*, 19 Eq. 444; *London Wharfing and Warehousing Co.*, 35 Beav. 37, where twenty-one days after demand had elapsed; *Catholic Publishing Co.*, 2 De G. J. & Sm. 116, where they had not. See, also, *Pen-y-van Colliery Co.*, 6 Ch. D. 477, *ante*, p. 842, note (*b*).

been established (*g*). But the Court will itself judge whether the debt is disputed simply to get rid of the petition, or *bonâ fide* because it is not due (*h*), and unless the company adduce such evidence as will show that there is a question to be tried, a winding-up order ought to be made (*i*).

Judgment creditor.

Even if the petitioner has obtained judgment against the company, still if there is evidence to show that the judgment was obtained by fraud, and the petitioner declines an inquiry on the subject, his petition will be dismissed (*k*). At all events, a winding-up order will not usually be made in such a case without giving the company an opportunity of impeaching the judgment.

Creditor a member seeking an unfair advantage.

Where the petitioning creditor was himself a member of the company, and the debt due to him was due by the rules of the company, and the company was solvent, and the object of the petitioner was to force the company to pay him in preference to other members in the same position as himself, the Court refused to make a winding-up order (*l*).

Amount of debt.

Except in the case of building societies (*m*), it is not necessary that the petitioning creditor's debt should amount to 50*l.*; but petitions in respect of a smaller amount are not encouraged. If the debt is of less amount, the petitioner must make out some special ground for making a winding-up order (*n*), and must show that the company is unable to pay its debts by some other evidence than non-payment of himself within three weeks after demand. A judgment debt of less than 50*l.* followed by an unsatisfied execution has been decided to be sufficient (*o*). If non-payment within three weeks after

(*g*) *Rhydydefed Colliery Co.*, 3 De G. & J. 80; *Inventors' Association*, 2 Dr. & Sm. 553. See, also, *Brighton Club and Norfolk Hotel Co.*, 35 Beav. 204.

(*h*) *King's Cross Industrial Dwellings Co.*, 11 Eq. 149.

(*i*) *Great Britain Mutual Life Assurance Society*, 16 Ch. D. 246.

(*k*) *Hope Mutual Life Assurance Co.*, 1 N. R. 542, L. J., and *Bowes* v. *Same Co.*, 11 H. L. C. 389.

(*l*) *Planet Benefit Building Soc.*, 14 Eq. 441.

(*m*) See 37 & 38 Vict. c. 42, § 32, cl. 4.

(*n*) *Fancy Dress Balls Co.*, W. N. 1899, p. 109; *Herbert Standring & Co.*, W. N. 1895, p. 98; *Milford Docks Co.*, 23 Ch. D., p. 295; and *Leyton and Walthamstow Cycle Co.*, W. N. 1901, p. 225, where the petition was supported by other creditors.

(*o*) *London and Birmingham Alkali Co.*, 1 De G. F. & J. 257.

demand is relied upon, that period must have expired before the presentation of the petition (*p*).

Ground of petition.

Inability to pay debts is, in a creditor's petition, the ground generally relied upon for obtaining a winding-up order; but a creditor's petition may be supported on any of the other grounds mentioned in the Act of 1862 (*ante*, p. 848).

b) Contributories' petitions.

b) Contributories' petitions.

a) Under older Acts.

When a petition to wind up a company compulsorily is presented by a contributory, the Court will take into consideration not only the question whether the company is brought within one or more of the statutory provisions under which it may be wound up, but also whether an order to wind up is necessary or expedient having regard to the interests of the shareholders generally. This was clearly settled when the Winding-up Acts of 1848—9 were in force (*q*); and not only did the Court decline to make a winding-up order under those Acts at the instance of a contributory, where the company was not shown to be insolvent (*r*); but even where a company was under heavy liabilities, and had ceased to carry on its business, the Court would not order it to be wound up if measures were being taken to wind up its affairs out of Court, and there was good reason to suppose that its liabilities would be discharged and its assets divided as satisfactorily without the interference of the Court as with it (*s*).

b) Under the Companies Act, 1862.

The discretion entrusted to the Court by the Companies Act, 1862, is certainly not more restricted than that which it possessed under the older Acts (*t*); and in exercising that discretion, when a winding-up order is sought by a contributory,

(*p*) *Catholic Publishing Co.*, 2 De G. J. & Sm. 116. See, also, *ante*, p. 849, note (*b*).

(*q*) See *Ex parte Wyld*, 1 Mac. & G. 1, where the company, although not prosperous, was solvent; *Ex parte Wise*, 1 Drew. 465; *Metropolitan Saloon Omnibus Co.*, 5 Jur. N. S. 922. In *Ex parte Goldsmith*, 14 Jur. 734, V.-C. Wigram seems to have thought that the Act of 1848 was more imperative than it really was.

(*r*) See the last note.

(*s*) *Ex parte Wise*, 1 Drew. 465; *Ex parte Watson*, 3 De G. & S. 253; *Ex parte Guest*, 5 ib. 458; *Re Monmouthshire and Glamorganshire Banking Co.*, 15 Beav. 74. See, too, *Ex parte Phillipps*, 1 Sim. N. S. 605, where a suit was pending.

(*t*) See §§ 86, 91, 149, of the Act of 1862; *Suburban Hotel Co.*, 2 Ch. 737; *Professional, &c., Building Soc.*, 6 Ch. 856; *Planet Benefit Building Soc.*, 14 Eq. 441.

the Court is not only guided by the state of the company, but also by the utility of the order, if made (*u*), and by the wishes of the majority of the shareholders. If, however, the Court sees that the majority of the shareholders who oppose the order are not acting *bonâ fide* in the interests of the company, or are doing so in ignorance of the real facts of the case, it may disregard their wishes (*x*). Even where it is agreed on all hands that the company must be wound up, the Court will, as a rule, refuse to order it to be wound up compulsorily at the instance of a contributory, if the majority of other shareholders, with full knowledge of all material facts, prefer to wind up voluntarily, or subject to the supervision of the Court, and *bonâ fide* intend so to do (*y*).

Existence of a voluntary winding up.

If a resolution to wind up voluntarily has been duly passed and confirmed the Court will not order the company to be wound up compulsorily upon a contributory's petition; unless it be proved that the resolution has been improperly obtained, as for instance where it has been procured by directors or shareholders, whose conduct is complained of and whose object is to prevent inquiry (*z*); or unless there be matters which require investigation, and it seems probable that no such investigation will or can be efficiently carried out if a compulsory order is not made, and those who oppose such an order can show no plausible ground for their opposition (*a*); or unless the petition is supported by creditors. Nor will the

(*u*) *Middlesborough Assembly Rooms Co.*, 14 Ch. D. 104; and *New Gas Generator Co.*, 4 Ch. D. 874, where there were no debts or assets worth mentioning, and no members except the subscribers to the memorandum of association. Compare *Tumacacori Mining Co.*, 17 Eq. 534, where there was property and fraud alleged.

(*x*) *Thomas Edward Brinsmead & Sons* [1897], 1 Ch. 406, and cases *infra*, note (*a*).

(*y*) See *City and County Bank*, 10 Ch. 470; *London Mercantile Discount Co.*, 1 Eq. 277; *General International Agency Co.*, 36 Beav. 1.

(*z*) *Varieties, Limited* [1893], 2 Ch. 235; *Gold Co.*, 11 Ch. D. 701, where the earlier cases of *Bank of Gibraltar and Malta*, 1 Ch. 69; *Imperial Bank of China and Japan*, ib. 339; *West Surrey Tanning Co.*, 2 Eq. 737; *Fire Annihilator Co.*, 32 Beav. 561; and *Littlehampton, &c., Steam Ship Co.*, 2 D. J. & S. 521, are examined. See, also, *Hadleigh Castle Gold Mines, Ld.* [1900], 2 Ch. 419; *London and Mercantile Discount Co.*, 1 Eq. 277. The question turns on the true construction of §§ 79, 129 and 145 of the Companies Act, 1862. See *E. Bishop & Sons, Ld.* [1900], 2 Ch. 254.

(*a*) *Haycraft Gold, &c., Co.* [1900], 2 Ch. 230. Compare *Doré Gallery, Ld.*, W. N. 1891, p. 98. See, too,

Court grant a supervision order in such a case, unless special circumstances are proved (*b*). If, however, the contributory's petition was presented before the resolution for a voluntary winding up was confirmed the case may be different (*c*); and is so, if the resolutions are invalid (*cc*). The existence of a voluntary winding up for the purposes of a reconstruction which has failed does not throw such difficulties in the way of a compulsory order as an ordinary voluntary winding up might do (*d*).

Petition by Official Receiver.

The power of the Court to make an order to wind up a company which is being wound up voluntarily or under supervision, on a petition presented by the Official Receiver, has been already referred to (*e*).

Very small companies.

Although one of the circumstances under which a registered company may be wound up by the Court is when the members are less than seven in number, the Court will not, at the instance of a contributory, order a company with very few members to be wound up compulsorily if a voluntary winding up is desired, and there are no circumstances showing that the company will not be fairly wound up voluntarily (*f*). But if the question is whether the company shall be wound up or go on, and the Court thinks it ought to be stopped, the small number of the members is no reason why a compulsory order should not be made (*g*).

Companies for public purposes.

The Court may, if a proper case be made out, order a company incorporated for public purposes to be wound up on the petition of a contributory, although it may be impossible to sell the undertaking or property of the company without an Act of Parliament (*h*).

Varieties, Ld. [1893], 2 Ch. 235. As to the larger powers which the Court can exercise under a compulsory order, see Companies (Winding-up) Act, 1890, § 8, and *ante*, pp. 858 and 860.

(*b*) *Gold Company*, 11 Ch. D. 701, 718.

(*c*) *Gold Company*, 11 Ch. D. 701, 717; *West Surrey Tanning Co.*, 2 Eq. 737.

(*cc*) See *Haycraft Gold, &c., Co.* [1900], 2 Ch. 230; and *State of Wyoming Syndicate* [1901], 2 Ch. 431, the case of a creditor's petition.

(*d*) *Gutta Percha Co.* [1900], 2 Ch. 665.

(*e*) *Ante*, p. 860.

(*f*) *Natal Co.*, 1 Hem. & M. 639, where there were nine shareholders.

(*g*) *Sanderson's Patents Assoc.*, 12 Eq. 188, where there were only seven shareholders; *London and County Coal Co.*, 3 Eq. 355. But see *New Gas Generator Co.*, 4 Ch. D. 874.

(*h*) *Barton-upon-Humber, &c., Waterworks Co.*, 42 Ch. D. 585, and

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Majority of members desiring to go on.

Where, in the case of a limited company, a contributory seeks for a winding-up order, and the majority of the members are of opinion that there is a reasonable prospect of making arrangements for paying their debts (*i*), or of carrying on the business of the company with success, and they oppose the application on this ground, the Court will give effect to their wishes and decline to make a winding-up order (*k*); unless the company is a fraudulent company which ought to be stopped (*l*), or the object for which the company was formed is clearly unattainable (*m*). In the case of an unlimited company, however, or of a limited company with a reserve capital which can only be called up in the event of a winding-up order, the case is different, as has been already pointed out (*n*).

Companies Act, 1900, § 12.

If a shareholder presents a petition to wind up a company on the ground that default has been made in filing the report or holding the statutory meeting in accordance with the requirements of the Companies Act, 1900, the Court may either direct the company to be wound up or give directions for the report being filed, or a meeting being held, or make such other order as may be just, and may order the costs of the petition to be paid by any persons who in the opinion of the Court are responsible for the default. The petition cannot be presented until the expiration of fourteen days after the last day on which the meeting ought to have been held (*o*).

Companies amalgamated with others.

Although the Act declares that a company may be wound up if it does not commence business within a year from its incorporation, or if it suspends its business for the space of a year, yet, a company which has transferred its business to another company, and has ceased to carry on business itself only by reason of such transfer, will not be ordered to be wound up unless there are other grounds for the order in

Wey and Arun Junction Canal Co., 4 Eq. 197, and *ante*, p. 835.

(*i*) *City and County Bank*, 10 Ch. 470.

(*k*) *Ante*, p. 854. See, also, *Factage Parisien Co.*, 10 Jur. N. S. 121, L. J.; *Metropolitan Saloon Omnibus Co.*, 5 Jur. N. S. 922, L. J.

(*l*) *London and County Coal Co.*, 3 Eq. 355; *Thomas Edward Brinsmead & Sons* [1897], 1 Ch. 45 & 466, and *ante*, p. 853.

(*m*) *Haven Gold Mining Co.*, 20 Ch. D. 151; *German Date Coffee Co.*, ib. p. 169; *Suburban Hotel Co.*, 2 Ch. 737, and see *ante*, pp. 853 and 854.

(*n*) See *ante*, pp. 855 and 856.

(*o*) Comp. Act, 1900, § 12 (8), and *ante*, pp. 845 and 846.

addition to suspension of business (*p*). If, however, the company which has transferred its business is unable to pay its debts, and the company which has taken its business does not discharge them, an order to wind up the first company will be made (*q*).

Amalgamation under §§ 161 and 162.

It may here be observed, that if a company has passed a resolution to wind up voluntarily, and has transferred its business to another company, under §§ 161 and 162 of the Companies Act, 1862, and a contributory is desirous of impeaching the validity of such transfer, he can only do so by an action. If he petitions for leave to bring an action and for a compulsory winding-up order, the petition will not be dismissed, but will be ordered to stand over with leave to bring an action if the Court is satisfied by the evidence before it that there are reasonable grounds for impeaching the transactions complained of (*r*).

Preliminary inquiries.

Under the Winding-up Act of 1848, § 12, the Court was expressly empowered to direct preliminary inquiries before finally disposing of a petition to wind up. This power is also exercisable under the Companies Act, 1862, and in several cases petitions have been directed to stand over, in order that meetings might be held and the wishes of the creditors and contributories ascertained (*s*). At the same time it was decided under the older Acts, and the same rule applies now, that no preliminary inquiries ought to be directed unless the Court feels unable to come to a satisfactory conclusion as to the proper course to take; nor unless it is also satisfied that

(*p*) *British Provident Assur. Society*, 1 Dr. & Sm. 113; *Anglo-Australian Assurance Co.*, 1 Dr. & Sm. 113, where the petitioner had concurred in the amalgamation; *Ex parte Cookson*, 15 Jur. 615. See, also, *Foster* v. *Borax Co.* [1901], 1 Ch. 326.

(*q*) *Ex parte Lawton*, 1 K. & J. 204, where the petitioner was being sued by the creditors. See, also, *Pennant and Craigwen Mining Co.*, 15 Jur. 1192; *Ex parte Dee*, 3 De G. & Sm. 112; *Ex parte Phillips*, 3 De G. & Sm. 3; *Family Endowment Soc.*, 5 Ch. 118, where, however, the petitioner was a creditor. See *infra*, as to insurance companies.

(*r*) See *Imperial Bank of China, India, and Japan*, 1 Ch. 339. See, also, *Irrigation Co. of France*, 6 Ch. 176, where a compulsory winding-up order was refused. See further on this subject, *infra*, c. 3.

(*s*) See *Thomas Edward Brinsmead & Sons* [1897], 1 Ch., p. 49, and *infra*. Cases in which petitions stand over for such a purpose are not usually reported.

further inquiry will enable it to form a more correct or decisive opinion (*t*).

Where there has been ample opportunity to ascertain the views of creditors or contributories, the Court will not allow further time for the purpose, unless there is some special reason for so doing (*u*); and where the contributories have already had a meeting and expressed their wishes, a further meeting will not be directed simply because the first may not have been altogether regular (*x*). Nor will a meeting be directed if no grounds for winding up are established (*y*).

Amalgamated Insurance companies.

With respect to Life Insurance companies which have amalgamated with another which is being wound up, it is provided as follows by 35 & 36 Vict. c. 41, § 4:

35 & 36 Vict. c. 41, § 4.

"Where the business or any part of the business of a life assurance company has, either before or after the passing of this Act, been transferred to another company under an arrangement in pursuance of which such first-mentioned company (in this Act called the subsidiary company), or the creditors thereof, has or have claims against the company to which such transfer was made (in this Act called the principal company), then if such principal company is being wound up by or under the supervision of the Court, either at or after the passing of this Act, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound up in conjunction with the principal company, and may, by the same or any subsequent order, appoint the same person to be liquidator for the two companies, and make provision for such other matters as may seem to the Court necessary, with a view to such companies being wound up as if they were one company; and the commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary company; the Court, nevertheless, shall have regard, in adjusting the rights and liabilities of the members of the several companies between themselves, to the

(*t*) See *Sherwood Loan Co.*, 1 Sim. N. S. 165; *Ex parte Pocock*, 1 De G. & S. 731; *Re Monmouthshire and Glamorganshire Banking Co.*, 15 Beav. 74; *Ex parte Troutbeck*, 13 Jur. 157. In *Re The Great Eastern and Western Rail. Co.*, 3 De G. & Sm. 218, the petition was unopposed; but it was intimated that it would be well if no winding-up order were to be made on an unopposed petition, without a preliminary inquiry, as it had been found that such orders would very often not have been made if the Court had been more fully informed of the facts. This, however, is not the usual practice.

(*u*) *Oriental Commercial Bank*, W. N. 1866, 283.

(*x*) *Imperial Mercantile Credit Association*, ib. 257.

(*y*) *Langham Skating Rink Co.*, 5 Ch. D. 669; *Joint Stock Coal Co.*, 8 Eq. 146.

constitution of such companies, and to the arrangements entered into between the said companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.

"When any subsidiary company, or company alleged to be subsidiary, is not in process of being wound up at the same time as the principal company to which it is subsidiary, the Court shall not direct such subsidiary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of such company against its being wound up, the Court is of opinion that such company is subsidiary to the principal company, and that the winding up of such company in conjunction with the principal company is just and equitable.

"Where any subsidiary company and principal company are being wound up by different branches of the Court, the Court to which appeals from such branches lie shall make an order directing in which branch the winding up of such companies is to be carried on, and the necessary proceedings shall be taken for carrying such order into effect.

"An application may be made in relation to the winding up of any subsidiary company, in conjunction with a principal company, by any creditor of, or person interested in, such principal or subsidiary company.

"Where a company stands in relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are several companies standing in the relation of subsidiary companies to one principal company, the Court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section."

3. *Summary of cases.*

Analysis of the decisions on this subject.

The decisions bearing on the subject above considered are very numerous, but after the foregoing observations it will be sufficient to notice the most important of them very shortly, and this may best be done by collecting them into three groups, as follows:

1. Cases in which a compulsory winding-up order has been made.

2. Cases in which a compulsory winding-up order has been refused.

3. Cases in which a compulsory winding-up order has been deferred.

Analysis of cases.

The cases in which an order to wind up subject to supervision has been made in preference to a compulsory order will be noticed hereafter (*infra*, c. 2).

Analysis of cases.

1. Order made.

1. Order Made.

A. *Creditors' petitions.*

Orders made on creditors' petitions are seldom reported. It is when no order is made that a report is needed.

Commercial Bank of South Australia, 33 Ch. D. 174.

Bank incorporated, and carried on business, in Australia; not registered here, but had a branch office in London. Winding up proceedings were pending in Australia. North, J., made an order, but expressed an opinion that the proceedings here should be ancillary to those in Australia, and that the liquidator should only deal with assets in this country. Compare *Matheson Brothers, Limited*, 27 Ch. D. 225, when no order was made.

Federal Bank of Australia, W. N. 1893, pp. 46 and 77.

A similar case. The company wished the petition to stand over, and on appeal the petitioners supported this course. C. A., however, affirmed the order, as being the more advantageous course.

General Rolling Stock Co., 34 Beav. 314.

Company unable to pay its debts. Members desired to wind up voluntarily, and some creditors supported them.

Isle of Wight Ferry Co., 2 Hem. & M. 597.

Company incorporated by Act of Parliament, and petitioning for further powers, but utterly insolvent, and alleged to have no saleable assets at all.

Borough of Portsmouth, &c., Tramways Co. [1892], 2 Ch. 362.

Company was incorporated by special Act.

Petitioner was the holder of debentures issued by the company under the Companies Clauses Consolidation Act, 1845. Principal and interest were in arrear, and the petitioner had obtained judgment in a debenture holder's action, and a receiver had been appointed. His debt remained unsatisfied.

Family Endowment Soc., 5 Ch. 118.
National Provincial Life Ass. Co., 9 Eq. 306.

Company amalgamated with another company which was itself being wound up.

General Co. for Promotion of Land Credit, 5 Ch. 363, and *Princess of Reuss* v. *Bos*, L. R. 5 H. L. 176.

Company formed and registered under the Act; but consisting entirely of foreigners, and with no assets in this country.

King's Cross Industrial Dwellings Co., 11 Eq. 149.

Petitioner's debt disputed, but on grounds considered unsubstantial.

Compare cases under head No. 3, pp. 881 *et seq.*

Home Assurance Association (No. 2), 12 Eq. 114.

Company insolvent (?), but desiring time to pay.

Flagstaff Silver Mining Co., 20 Eq. 268; *Globe New Patent Iron Co.*, 20 Eq. 337.

Company proved to be unable to pay its debts, though no execution had issued and no statutory demand had been made.

Analysis of cases.

1. Order made.

Creditor's petition.

Sovereign Life Assurance Co., 42 Ch. D. 540.

An order to wind up this company, which was hopelessly insolvent, was made on the petition of a policy holder, a scheme for arrangement under s. 14 of the Life Assurance Companies Act, 1870, having failed.

Krasnapolsky Restaurant, &c., Co. [1892], 3 Ch. 174.

Debenture holder's action pending. Secretary alleged that there were no assets of which liquidator could take possession, as all were covered by the debentures. Petitioning creditor adduced no evidence on this point. Order made, having regard to the powers of the Court under a compulsory order. Opponents had not shown that no benefit would result from the order.

Company being wound up voluntarily (see *ante*, p. 859).

State of Wyoming Syndicate [1901], 2 Ch. 431.

The company had passed resolutions for voluntary winding up; but the meetings, at which the resolutions were passed, having been summoned by the secretary and not by the board of directors, the resolutions were invalid. See, too, *Haycraft Gold, &c., Co.* [1900], 2 Ch. 230, *infra*, p. 875.

E. Bishop & Sons, Limited [1900], 2 Ch. 255.

The general body of creditors desired a compulsory order; it was, therefore, held that the petitioner need not show that the voluntary winding up would prejudice him.

United Service Co., 7 Eq. 76.

Conduct of directors required investigation—two petitions, one by a creditor and contributory, asking for a supervision order; the other by a creditor, asking for compulsory order. A supervision order was made on the first, but was superseded by a compulsory order on the second petition (*z*).

Bank of South Australia (No. 2) [1895], 1 Ch. 579.

Order made on the petition of a creditor whose debt arose under an agreement with the voluntary liquidator, and a compulsory order was required to give the creditor power to compel the liquidator to make calls to pay his debt.

National Debenture and Assets Corporation [1891], 2 Ch. 505.

Company being wound up under a supervision order. Fraud and malpractices alleged in the formation and promotion of the company, and investigation necessary. No charge against the liquidator.

Medical Battery Co. [1894], 1 Ch. 444.

Voluntary winding up commenced after presentation of petition; charges of fraud against outside public, but none in connection with promotion or formation of the company; debenture holders' action pending and receiver appointed, and same person voluntary liquidator; company and debenture holders under control of managing director and his family.

(*z*) This was done so as not to disturb the date of the commencement of the winding up. *Sed qu.*: see *Taurine Co.*, 25 Ch. D. p. 140.

Analysis of cases.

1. Order made.

Contributory's petition.

B. *Contributories' petition.*

Crown Bank, 44 Ch. D. 635.

Company had ceased to carry on its main business, which had been abandoned. It was carrying on other businesses which the Court held, notwithstanding the very wide terms of the memorandum of association, to be *ultra vires* except as auxiliary to the main business. The petition was opposed by creditors, the company, and some shareholders.

After the order had been made, but before it was drawn up, the petition was dismissed by consent.

Amalgamated Syndicate [1897], 2 Ch. 601.

A case similar to the last.

Bristol Joint Stock Bank, 44 Ch. D. 703.

Part of the company's capital had been set aside as a reserve capital under the Companies Act, 1879. Practically all the paid-up capital had been exhausted, and the business had dwindled down until there was no reasonable hope of success. Shareholders divided in opinion.

General Phosphate Co., W. N. 1893, p. 142.

Company's business could not be continued—substratum gone. Shareholders at a meeting summoned by Court voted against a compulsory order. Matters in connection with promotion required investigation.

Thomas Edward Brinsmead & Sons [1897], 1 Ch. 45 & 406.

Fraudulent company—investigation necessary—see *ante*, p. 853.

Haven Gold Mining Co., 20 Ch. D. 151.
German Date Coffee Co., 20 Ch. D. 169.

In both these cases it was impossible for the company to carry on the business for which it was formed. The petitions were opposed by the majority of the shareholders, and in the latter case a year had not elapsed since the formation of the company.

Diamond Fuel Co., 13 Ch. D. 400.

Company's business had been carried on at loss, its capital had been expended and its property, except some patents which had nearly expired, had been sold at a great sacrifice, and the business could not be resuscitated. The petitioner was a fully paid-up shareholder, but it was shown that the company had claims for large sums against the directors, which if recovered would leave a considerable surplus to be divided among the shareholders.

Tumacacori Mining Co., 17 Eq. 534.

Company doing nothing after four years; assets to divide; debts to pay; majority desirous of settling out of Court.

Quære, if an order ought in this case to have been made? see 4 Ch. D. 876.

West Surrey Tanning Co., 2 Eq. 737.

Company doing no business—circumstances to be investigated—voluntary winding up proposed, but one director able to carry everything as he liked.

London and County Coal Co., 3 Eq. 355.

Company only three or four months old; formed dishonestly; the directors themselves not paying anything on their shares, and defraying the expenses out of money obtained from an unwary secretary, who had taken and paid for shares in order to secure his appointment. See *ante*, p. 853.

Sanderson's Patents Assoc., 12 Eq. 188.

Only seven shareholders, and no business. Compare *New Gas Generator Co.*, 4 Ch. D. 874.

Metropolitan Railway Warehouse Co., W. N. 1867, p. 94.

Company unable to commence business within a year.

Ex parte Latta, 3 De G. & Sm. 186.
Pennant and Craigwen Mining Co., 15 Jur. 1192.
Ex parte Sedgwick, 2 Jur. N. S. 949.
South Lady Bertha Mining Co., 2 J. & H. 376.
Tretoil and Messer Mining Co., 2 J. & H. 421.
Times Fire Assurance Co., 30 Beav. 596.

In all these cases the petitioner was being or had been sued by a creditor of the company, whom the company either could not or would not pay. See, also, the *Bosworthon Mining Co.*, 26 L. J. Ch. 612, M. R., where, however, an inquiry was first directed, in order to ascertain whether the petitioner had paid more than he owed the company.

Ex parte Holinsworth, 3 De G. & S. 7.
Ex parte Turner and James, ib. 127, and 2 Mac. & G. 169.
Ex parte Cooke, 3 De G. & S. 148.
Ex parte Barber, 1 Mac. & G. 176.
Ex parte Woolmer, 5 De G. & S. 117, and 2 De G. M. & G. 665.
Ex parte Goldsmith, 14 Jur. 734.
Larne, Belfast, &c., Rail. Co., ib. 996.

In all these cases the companies had proved abortive and unable to commence business, but there were liabilities to be provided against or assets to be shared. In the last of them the directors would not produce any accounts.

Bastenne Bitumen Company, 3 De G. & Sm. 265.

A suit for a dissolution was pending. The circumstances which induced the Court to make a winding-up order are not stated. It could not have done so as a matter of course. See *Ex parte Phillipps*, 1 Sim. N. S. 605, *infra*, p. 880.

Ex parte Walker and Ex parte Troutbeck, 1 De G. & Sm. 585; affirmed 1 H. & T. 100, and 13 Jur. 157.

The company had no outstanding debts, but it had stopped business; a suit for its dissolution was pending, and some of its members had been compelled to pay much more than their proper share of debts.

Sherwood Loan Co., 1 Sim. N. S. 165.
St. George's Building Society, 4 Drew. 154.

Friendly societies which could not go on, and the rights of whose members could not be adjusted without a winding up.

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Analysis of cases.

. Order made.

Contributory's petition.

Electric Telegraph Co. of Ireland, 22 Beav. 471.

The company had spent all its capital, and could not go on without more.

Norwich Yarn Company, 12 Beav. 366.

The company was insolvent, and daily getting worse, but better times were hoped for.

Wey and Arun Junction Canal Co., 4 Eq. 197.

Canal company incorporated by special Act of Parliament, and ruined by railway competition.

Barton-upon-Humber and District Water Co., 42 Ch. D. 585.

A registered company with powers conferred upon it for the public benefit by a provisional order of the Board of Trade confirmed by a special Act. No funds available to complete the works, which had never been opened. Money had been misapplied by the directors. The company did not appear.

Bradford Navigation Co., 10 Eq. 331.

Is another instance of the same sort, but the company itself petitioned.

Company amalgamated with another.

Ex parte Phillips, 3 De G. & S. 3.
Ex parte Dee, ib. 112.
Pennant and Craigwen, &c., Mining Co., 15 Jur. 1192.

In each of these cases a company had ceased to carry on business, and had been amalgamated with another company. In *Ex parte Phillips* the company's assets exceeded its liabilities, and there was a surplus to divide; in *Ex parte Dee* it was objected that in consequence of outstanding policies, the company's liabilities could not be settled for many years; in the *Pennant and Craigwen Co.* creditors were suing the shareholders.

Ex parte Lawton, 1 K. & J. 204.

The company had failed; its liabilities were outstanding; but a new company had been formed by all the shareholders of the first, save the petitioner and another. It was sworn that the affairs of the old company would speedily be wound up if no order were made. The petitioner alone desired the Court to interfere, and he, not having paid his calls, was sued by a creditor at the instance of the company. The order in this case was made on the ground that the company in question existed only for the purpose of winding up its affairs, that its assets were outstanding, and its liabilities undischarged.

N.B.—For other cases of amalgamated companies, see *ante*, p. 870, and *infra*, pp. 878 and 881.

Company being wound up voluntarily (see *ante*, p. 864).

Fire Annihilator Co., 32 Beav. 561.

Voluntary winding up going on for five years and not ended.

Varieties, Limited [1893], 2 Ch. 235.

Object of company could not be attained. Substratum gone. After presentation of petition voluntary winding up resolved

Analysis of cases.

upon. Matters in connection with the promotion and formation of company required investigation. Majority in favour of a voluntary winding up obtained by votes of those whose conduct rendered investigation desirable.

1. Order made.

Haycraft Gold Reduction and Mining Co. [1900], 2 Ch. 230.

Contributory's petition.

Matters requiring investigation. Steps were being taken to dissolve company and destroy its books, and shareholders who opposed a compulsory order suggested no plausible ground for opposition. The resolutions to wind up were also invalid. See *State of Wyoming Syndicate* [1901], 2 Ch. 341, *ante*, p. 871.

Gutta Percha Corporation [1900], 2 Ch. 665.

Voluntary winding up was for the purposes of a reconstruction which had failed. Investigation necessary. Order made though no impropriety in the passing of the resolution.

2. Petition dismissed.

2. Petition dismissed.

A. *Creditors' petitions.*

Padstow Total Loss Association, 20 Ch. D. 137.

Association illegal under § 4 of the Companies Act, 1862, and the petitioning creditor had notice of the illegality.

See, too, *Ilfracombe Permanent, &c., Building Society, infra*, p. 876.

Herne Bay Waterworks Co., 10 Ch. D. 42.
Uruguay Central and Hygueritas Rail. Co. of Monte Video, 11 Ch. D. 372.

Petitioner a debenture holder (see *ante*, p. 843, and compare *Olathe Silver Mining Co.*, 27 Ch. D. 278, and *Borough of Portsmouth Tram. Co.* [1892], 2 Ch. 362).

Great Britain Mutual Life Association Society, 16 Ch. D. 247.

Order made on the petition of the second petitioning creditor, the debt of the first being disputed. On appeal at the desire of a committee of policy holders, this order was discharged, and a scheme for the reduction of the companies' contracts entered into. See same case, 19 Ch. D. 39, and 20 Ch. D. 351.

The Free Fishermen of Faversham, 36 Ch. D. 329.
Chapel House Colliery Co., 24 Ch. D. 259.
Uruguay Central and Hygueritas Rail. Co. of Monte Video, 11 Ch. D. 372.

In these cases the petition was opposed by the majority of creditors, and it did not appear that the petitioner would gain anything by an order.

Bolton Benefit Loan Society, 12 Ch. D. 679.

Company unregistered, consisting at the date of the petition of less than seven members. Compare *South London Fishmarket Company*, 39 Ch. D. 324.

Pen-y-van Colliery Co., 6 Ch. D. 477.

Petitioner's claim for unliquidated damages and disputed.

Paris Skating Rink Co., 5 Ch. D. 959.

Petitioner's debt assigned since petition was presented.

Catholic Publishing Co., 2 De G. J. & Sm. 116.

Petitioner's debt disputed—twenty-one days after demand had not expired when petition was presented.

Analysis of cases.

2. Petition dismissed.

Creditor's petition.

London and Paris Banking Co., 19 Eq. 444.
London Wharfing and Warehousing Co., 35 Beav. 37.

Petitioner's debt disputed—twenty-one days after demand had elapsed before petition was presented.

Hope Mutual Life Assurance Co., 1 N. R. 542, and 11 H. L. C. 389.

Petitioner's debt, a judgment debt, disputed on the ground of fraud, and he declined to try its validity.

Gold Hill Mines, 23 Ch. D. 210.

Petitioner's debt was small and disputed, and no evidence of the company's insolvency was adduced. Petition was dismissed on motion.

European Banking Co., 2 Eq. 521.

Petitioner's debt small, and attached by judgment creditor of his own.

Fancy Dress Balls Co., W. N. 1889, p. 108.

Petitioner's debt under 50*l.*, and no special grounds for a winding-up order shown. See *ante*, p. 862.

Langley Mill Stream, &c., Co., 12 Eq. 26.

Petitioner's debt *not* disputed, but majority of creditors preferring a voluntary winding up.

Planet Benefit Building Soc., 14 Eq. 441.

Petitioner, a withdrawing member, seeking to obtain an unfair advantage over others. Company not insolvent.

Company being wound up voluntarily (see *ante*, p. 859).

Russell Cordner & Co. [1891], 3 Ch. 171.

In all probability assets would be amply sufficient to pay creditors in full; creditor, therefore, not prejudiced by voluntary winding up. In such a case the larger powers of investigation under a compulsory order are immaterial so far as regards creditors.

A supervision order was made on the petition of another creditor.

Greenwood & Co. [1900], 2 Q. B. 307.

Creditor did not show that any benefit would result to the *general body* of creditors.

Semble, this goes too far, see [1901], 1 Ch. p. 109.

Ilfracombe Permanent Benefit Building Society [1901], 1 Ch. 102.

Petitioner alleged irregularities and necessity for investigation; all the other creditors had accepted a composition. Nothing substantial would result from an order. *Semble* also the society was illegal under Comp. Act, 1862, § 4 (see *ante*, p. 185).

B. *Contributories' petitions.*

a) Company not insolvent.

Crystal Reef Gold Mining Co. [1892], 1 Ch. 409.

Petitioner in arrear with calls, and no ground for winding up shown.

Analysis of cases.

2. Petition dismissed.

Contributory's petition.

Capital Fire Insurance Association, 21 Ch. D. 209.

Reason alleged was that company had not commenced business within a year. The company was formed to carry on business here or abroad. It had commenced business in France, and intended doing so in England.

Middlesborough Assembly Rooms, 14 Ch. D. 104.

Under the circumstances the suspension of business for more than a year (the reason alleged in the petition for the winding up) was reasonable. The majority of shareholders opposed the petition.

Langham Skating Rink Co., 5 Ch. D. 669.

Company the reverse of prosperous, but not insolvent.

New Gas Generator Co., 4 Ch. D. 474.

Only seven members, and nothing to be gained by making an order. Compare *Sanderson's Patents Assoc.*, 12 Eq. 188.

Ex parte Wyld, 1 Mac. & G. 1.

Company solvent, and carrying on business; petitioner would not pay his calls, and was sued by a creditor at the instigation of the directors.

Ex parte Spackman, 1 Mac. & G. 170.

Company solvent, and carrying on business. Petitioner was dissatisfied with an arrangement by which several shareholders had retired. This arrangement was subsequently held to be *ultra vires* (*b*).

National Live Stock Insurance Co., 26 Beav. 153.

The company was carrying on its business. It was alleged to be insolvent, and would have been so, if it could not have recovered monies due to it from its own directors and others for calls. But it was in a position to recover such monies, and was solvent when credited with them.

European Life Ass. Soc., 9 Eq. 122, and 10 Eq. 403.

Company not proved to be unable to pay all its existing debts and liabilities, but was not flourishing, and would probably be unable to discharge liabilities it would incur if it continued business.

Ex parte James, 1 Sim. N. S. 140.

A member of the managing committee of an abortive company petitioned to have it wound up. There were no *bonâ fide* debts outstanding; the real object of the petitioner was to obtain payment of his brother's bill of costs, which was disputed, and for which an action had been brought and discontinued.

Anglo-Greek Steam Co., 2 Eq. 1, *ante*, p. 852.

Misconduct on part of managers and directors alleged, but no insolvency, and no reason why business should not be profitable with better management.

Hop and Malt Exchange Co., W. N. 1866, p. 222.

Company not a year old, and not in debt; members about equally divided as to whether they should go on or not, and

(*b*) See *ante*, p. 715.

Analysis of cases.

2. Petition dismissed.

Contributory's petition.

articles providing that four-fifths must concur in order to pass a resolution to dissolve.

Suburban Hotel Co., 2 Ch. 737.
London and Suburban Bank, 6 Ch. 641.
Joint Stock Coal Co., 8 Eq. 146.
Factage Parisien Co., 10 Jur. N. S. 121.
Metropolitan Saloon Omnibus Co., 5 Jur. N. S. 922.

Company not prospering, but not insolvent, and majority desirous of going on. Company limited, and capital not all paid up.

Professional Building Society, 6 Ch. 856.

Similar circumstances, but no limit to liability. Petitioner under no liability.

Spence's Patent, &c., Cement Co., 9 Eq. 9.

No allegation of insolvency in the petition; but evidence of insolvency, and allegation and proof of continued loss. Petition supported by creditor.

Ex parte Fisher, 3 De G. & Sm. 116.

A subscriber for shares in a proposed railway company, petitioned to wind up a company formed for making and working portion only of the line originally contemplated. The projectors were authorised to apply for an Act to enable the company to make a less line than that first intended.

Planet Benefit Building Soc., 14 Eq. 441, *ante*, p. 876.

b) Company amalgamated with another.

Anglo-Australian Assurance Co., 1 Dr. & Sm. 113.

The company's business had been transferred to another company, and the petitioner had become a shareholder in it, and was bound by the transfer. The amalgamation, however, was disputed, and the selling company was being sued for its debts.

Ex parte Cookson, 15 Jur. 615.

A projected company had been amalgamated with another company, which had undertaken to buy up the scheme of the first. There were no debts of the former company outstanding or unsettled, but the money agreed to be paid was still unpaid. The sole object of the petition was to have this money got in and divided. See, also, the previous heads and next head.

c) Company being wound up voluntarily (see *ante*, p. 864).

Hadleigh Castle Gold Mines, Ld. [1900], 2 Ch. 419.

Petitioner alleged that resolution for voluntary winding up was not passed by requisite majority. Court held that chairman's ruling was conclusive (see *ante*, p. 428), and petitioner had made no case for a compulsory order.

Irrigation Co. of France, 6 Ch. 176.
Imperial Bank of China and Japan, 1 Ch. 339.

Company being wound up voluntarily in order to be amalgamated with another.

Analysis of cases.

2. Petition dismissed.

Contributory's petition.

London and Mercantile Discount Co., 1 Eq. 277.

Directors charged with breaches of trust, and commanding a majority of votes.

Bank of Gibraltar and Malta, 1 Ch. 69.
Gold Company, 11 Ch. D. 701.

Company being wound up voluntarily, petitioner showed no fraud in the passing of the resolution for that purpose, though fraud in other matters was alleged.

General International Agency Co., 36 Beav. 1.

Majority in favour of voluntary winding up.

Ex parte Watson, 3 De G. & Sm. 253.

The company had carried on business as bankers in India and in this country, and was being wound up extra-judicially. The petition was presented by a shareholder, who, declining to pay the amount required of him, was sued by a creditor.

Ex parte Guest, 5 De G. & Sm. 458.

The company was being wound up in a way approved by a majority of the shareholders. There was a large judgment debt to provide for, but the creditor was not pressing for payment.

Ex parte Wise, 1 Drew. 465.

This was a somewhat similar case to the last, and the real object of the petitioner was to make the directors account to the company for a misapplication of its assets.

d) Company small, and better wound up out of Court than in.

Natal, &c., Co., 1 Hem. & M. 639.
Sea, River, and Marine Insurance Co., W. N. 1866, p. 253.

Companies having only nine and seven members respectively, no debts, and no reason why they should not be wound up voluntarily. In both cases the company desired to wind up voluntarily.

e) Winding-up order useless if made.

New Gas Generator Co., 4 Ch. D. 874.

Compare *Tumacacori Mining Co.*, 17 Eq. 534.

Ex parte Inderwick, 3 De G. & Sm. 231.

The petitioner was a subscriber to an abortive company. There were no outstanding liabilities, and no assets except what might be recovered from the promoters in respect of matters which occurred five years before, and which had been already made the subject of two compromises.

Ex parte Murrell, 3 De G. & Sm. 4.

The petitioner was a subscriber to an abortive company, but it appeared that there were no outstanding liabilities, and no assets except what could be got by opening accounts which had been long acquiesced in and acted upon. The petitioner had received back the greater part of his subscriptions. Compare *Ex parte Pocock*, 1 De G. & S. 731; *Ex parte Williams*, 1 Sim. N. S. 57.

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Analysis of cases.

2. Petition dismissed.

Contributory's petition.

Ex parte Phillipps, 1 Sim. N. S. 605.

Suit for dissolution pending, in which everything could be done. Compare *Bastenne Bitumen Co.*, 3 De G. & S. 265, *ante*, p. 873.

f) *Petitioner the holder of fully paid-up shares* (see *ante*, p. 845).

Pioneers of Mashonaland Syndicate [1893], 1 Ch. 731.

Petitioner was holder of fully paid-up shares. Company unable to pay its debts as they became due, but many of its shares had been issued at a discount, and if calls were made on such shares they would produce a surplus divisible among shareholders. See as to this *ante*, p. 846.

Rica Gold Washing Co., 11 Ch. D. 36.

Petitioner was the holder of fully paid-up shares for small value, but failed to show that there would be a substantial amount of assets to be divided amongst the shareholders.

The charges of fraud were too vague.

g) *Foreign company.*

Lloyd Generale Italiano, 29 Ch. D. 219.

Petition presented by the company. Order refused on the ground that the Court has no jurisdiction to wind up an unregistered foreign company which has merely carried on business in England by agents without having any office in this country. See *ante*, p. 840.

h) *Petition an abuse of the Court.*

A company [1894], 2 Ch. 349.

Petition presented for purpose of putting pressure on the company. The advertisement of the petition was restrained and all proceedings under it stayed.

3. Petition ordered to stand over.

3. Petition ordered to stand over.

A. *Creditors' petitions.*

Western Canada Oil Co., 17 Eq. 1.
St. Thomas Dock Co., 2 Ch. D. 116 (*c*).
Exmouth Docks Co., 17 Eq. 181.
Brighton Hotel Co., 6 Eq. 339.

In all these the petition stood over to see if means could be found for paying dissentient creditors.

(*c*) See the terms of undertaking required from the company, 2 Ch. D. 122. These are the usual terms, and an order in them is known as "a St. Thomas's Dock order."

Analysis of cases.

3. Petition ordered to stand over.

Creditor's petition.

Olathe Silver Mining Co., 27 Ch. D. 278.

Petitioner was a debenture holder, and the petition was ordered to stand over for inquiry whether the company had any assets other than those comprised in the debentures. See *ante*, p. 843.

Great Western Coal Consumers' Co., 21 Ch. D. 769.

Petition was opposed by the majority of creditors, and it was ordered to stand over for six months on terms, this being considered more beneficial to the other creditors than dismissing it.

Rhydydefed Colliery Co., 3 De G. & J. 80.

Petitioner's debt disputed.

Inventors' Association, 2 Dr. & Sm. 553.

Petitioner's debt disputed—voluntary winding-up proceeding—action against company commenced by petitioner, but obstructed by liquidator.

Imperial Guardian Life Ass. Soc., 9 Eq. 447.

Company amalgamated with another and in course of voluntary liquidation. Petitioner's debt disputed, and security offered.

Compare *King's Cross Industrial Dwellings Co.*, 11 Eq. 149, *ante*, p. 70.

B. *Contributories' petitions.*

City and County Bank, 10 Ch. 470.

Company desired to wind up voluntarily and to carry out an arrangement with its creditors, to which they agreed.

Imperial Bank of China, 1 Ch. 339.

Resolution to wind up voluntarily, in order to amalgamate with another company. Petition impeached whole proceeding, and was ordered to stand over, with liberty to file a bill.

British Provident Assurance Society, 1 Dr. & Sm. 113.

The company had transferred its business to another company, which was not shown to be unable or unwilling to fulfil its engagements.

Wheal Anne Mining Co., 30 Beav. 601.

The petition was ordered to stand over with a view to an arrangement being made. Creditors were suing in the Stannary Courts.

North Western Trunk Co., 3 De G. & Sm. 266.

The company had proved abortive, but it was not clear that anything capable of being wound up had really ever existed.

Ex parte Williams, 1 Sim. N. S. 57.

The company was abortive, and had, in fact, had its affairs wound up, but, as the petitioners alleged, in an improper manner. Compare *Ex parte Pocock*, 1 De G. & S. 731; *Ex parte Murrell*, 3 ib. 4; *Larne, Belfast, &c., Rail. Co.*, 14 Jur. 996.

Monmouthshire and Glamorganshire Banking Co., 15 Beav. 74.

The petition was ordered to stand over, to enable the company, if possible, to wind up its own affairs, which it had begun to do.

Analysis of cases.

3. Petition ordered to stand over.

Ex parte Collins, 8 W. R. 170.

The petition was ordered to stand over with liberty to apply; the solvency of the company depending on its right to enforce a disputed contract for the sale of its business to another company.

Contributory's petition.

Ex parte Pocock, 1 De G. & Sm. 731.

The company proved abortive. The great majority of the subscribers had been repaid part of the money they had paid for deposits and had released the directors. A dissatisfied subscriber, who had not executed the release, presented a petition for winding up the company, alleging a refusal by the directors to produce the accounts, and a misapplication of assets by them. The Court declined to order the company to be wound up; it also declined to direct any inquiry as to the expediency of winding it up; at the same time it would not dismiss the petition but ordered it to stand over, so that the petitioner might have an opportunity of seeing the accounts which had been withheld from him. What ultimately became of the petition does not appear. See, too, *Ex parte Capper*, 3 De G. & S. 1; and compare *Ex parte Murrell*, ib. 4. In *The Larne, Belfast, &c., Rail. Co.*, 14 Jur. 996, the directors refused to produce the accounts, and a winding-up order was therefore made.

Bosworthon Mining Co., 26 L. J. Ch. 612, M. R.

Inquiries were directed by consent, in order to see whether the petitioner, who was being sued by a creditor, had paid more than he owed to the company. A winding-up order was ultimately made.

Ex parte Moss, 14 Jur. 754.

An inquiry was directed to ascertain the position of the company abroad, it being half a foreign and half an English company.

SECTION V.—PROCEEDINGS TO OBTAIN A WINDING-UP ORDER, APPEALS FROM, AND STAYING PROCEEDINGS UNDER IT (*d*).

Petition for winding-up order.

The proper mode of applying to the Court for a winding-up order, whether by the Court or subject to the supervision of the Court, is by petition (*e*); it is heard in open Court (*f*).

Form of petition.

The petition must be in the prescribed form, with such

(*d*) This section relates to the procedure in the High Court. The procedure in the other Courts having jurisdiction under the Companies (Winding-up) Act, 1890, is, speaking generally, the same. The rules referred to in the following pages are the rules made under that Act, unless otherwise stated,

(*e*) 25 & 26 Vict. c. 89, §§ 82 and 148.

(*f*) Rules, 1892, r. 3.

variations as circumstances may require(*g*), and must be entitled in accordance with the requirements of the rules (*h*).

Contents of petition.

The petition should show the title of the petitioner to present the petition, and the circumstances on which he relies for obtaining the order; the petition should state these circumstances in sufficient detail to enable the Court to see from the petition itself that a winding-up order ought to be made, if the statements in the petition are not denied or satisfactorily explained by those who oppose it (*i*). If fraud be alleged the facts constituting the fraud must be stated (*k*). If the petitioner is the holder of fully paid-up shares, he must allege the existence of sufficient assets to give him a tangible share in the surplus (*l*); if a voluntary winding up is pending, he must show that he will be prejudiced thereby (*m*). A petition presented by a contributory should show that the provisions of 30 & 31 Vict. c. 131, § 40 (*ante*, p. 845), have been complied with; but an omission to state this is not fatal to the petition (*n*); it is sufficient if the fact appears from the affidavit in support (*o*). One petition to wind up two companies is wrong (*p*).

Amendment.

A petition may be amended by leave of the Court (*q*), but if amended a fresh advertisement may be required (*r*).

Copies.

Every contributory or creditor (*s*) is entitled to have a copy of the petition, on payment of 4*d.* per folio (Rules, 1890, r. 37).

Presentation.

A petition in the High Court is presented at the office of the registrar, who appoints the time and place at which it is to be heard; he may alter the time appointed (Rules, 1892, r. 15).

(*g*) Rules, 1890, r. 33, and forms 12 and 13. The former rules gave no form of petition. For a form under the older Acts, see *Re North of England Banking Co.*, 1 De G. & S. 545.

(*h*) Rules, 1892, r. 6. See, too, as to sealing, &c., rr. 7 and 8.

(*i*) *Wear Engine Works Co.*, 10 Ch. 188; *Langham Skating Rink Co.*, 5 Ch. D. 669.

(*k*) *Rica Gold Washing Co.*, 11 Ch. D. 36.

(*l*) Ib. and *ante*, p. 845.

(*m*) As to creditors, *ante*, p. 859, and contributories, *ante*, p. 864, *Doré Gallery, Ld.*, W. N. 1891, p. 98.

(*n*) *City and County Bank*, 10 Ch. 470.

(*o*) *Glendower Steamship Co.*, W. N. 1899, p. 14.

(*p*) *Shields Marine Ins. Co.*, W. N. 1867, pp. 265 and 296.

(*q*) *Queen's Benefit Building Soc.*, 6 Ch. 815.

(*r*) See *infra*, notes (*a*) and (*b*).

(*s*) Not the public generally. *Cheltenham and Swansea Railway, &c., Co.*, 8 Eq. 580.

Bk. IV. Chap. 1. Sect. 5.

Advertisements.

The petition must be advertised seven clear days before the hearing, once in the *London Gazette*, and once at least in a London daily morning newspaper, or such other newspaper as the Court may direct, or a local newspaper, according to the situation of the company's office (Rules, 1890, r. 34).

Contents of advertisements.

The advertisement must state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (*ib.*), and contain a note at the foot that any person who intends to appear at the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner within the time and in the manner prescribed by the rules (see as to this, *infra*, p. 888); an advertisement which does not contain such a note is to be deemed irregular (Rules, 1892, r. 19) (*t*). Forms of advertisement are given in the schedule to the rules (Form 16).

Mistakes in advertisement.

Care should be taken to make no mistake in advertising. An advertisement that a petition will be heard on Saturday the 20th of December, when the 20th fell on a Thursday, has been held insufficient (*u*); and a mistake, although trifling, in the name of the company may prove fatal (*x*). But proceedings are not invalidated by any formal defect or any irregularity if no substantial injustice is done (Rules, 1890, r. 177). Advertisements which wrongly stated the date of the presentation of the petition (*y*), or which named too early a time as the latest date for notices of intention to appear, have been treated as valid, when no one has come forward to say he was misled (*z*).

In cases of amendment.

The Court may give leave to amend the petition either with (*a*) or without (*b*) ordering it to be re-advertised.

Where order asked for at hearing differs from that in petition.

If the petition asks for a compulsory order, and at the hearing a supervision order only is asked for, the Court will,

(*t*) If the note is omitted, a fresh advertisement will be required, *Hille India Rubber Co.*, W. N. 1897, p. 6; *Mont de Piété of England* W. N. 1892, p. 166, not followed. As to dispensing with fresh advertisements on a rehearing, *Patent Floor Cloth Co.*, 8 Eq. 664.

(*u*) *Re The Joint Stock Companies Winding-up Act*, 13 Beav. 434.

(*x*) *City and County Bank*, 10 Ch. 470.

(*y*) *Bull Bevan & Co.*, W. N. 1891, p. 170.

(*z*) *Broad's Patent Night Light Co.*, W. N. 1892, p. 5.

(*a*) *Army and Navy Hotel*, 31 Ch. D. 644; *Newcastle Machinists' Co.*, W. N. 1888, p. 146, and note W. N. 1889, p. 1.

(*b*) *Cork Constitution, Ld.*, 9 L. R., Ir. 163.

as a rule, order the petition to be re-advertised in all the papers in which the original advertisement appeared, with a statement that only a supervision order is to be asked for (*c*); the same rule applies in the converse case (*d*).

Petition coming on too soon.

In a case where a petition comes on to be heard too soon, the Court can in its discretion dispense with fresh advertisements (*e*); or order the petition to stand over in order that fresh advertisements may be issued (*f*).

Time for advertisement.

The petition may be presented and the advertisements issued on the same day: and where an advertisement stated that a petition had that day been presented, and the petition was presented on that day, but not until after the advertisement had been published, the Court held the advertisement sufficient (*g*).

It is improper to publish in a newspaper the contents of a petition before it is heard (*h*), and the Court will restrain the advertisement of a petition which is an abuse of the process of the Court (*i*).

Service of petition.

The petition, unless presented by the company itself, must be served at its registered office (*k*); and if there is no such office, then at the company's principal or last known principal place of business, if any can be found; and the service must be upon some member, officer, or servant (*l*) of the company

(*c*) *New Oriental Bank Corp.* [1892], 3 Ch. 563; *New Morgan Gold Mining Co.*, W. N. 1893, p. 79; *Dombey & Son*, W. N. 1895, p. 146. Fresh advertisements were not required in *Civil Service Brewery Co.*, W. N. 1893, p. 5, and *Waterproof Materials Co.*, ib. p. 18.

(*d*) *National Whole Meal Bread, &c., Co.* [1891], 2 Ch. 151.

(*e*) *City and County Bank*, 10 Ch. 470.

(*f*) *London and Westminster Wine Co.*, 1 Hem. & M. 561. Under the older Acts, it was held that the advertisement of the petition in the *London Gazette* need not be seven days before the hearing of the petition, although the advertisement in the other papers must, *English and Irish Church and University Assurance Society*, 10 W. R. 33. It is, however, different now.

(*g*) *Cork and Youghal Rail. Co.*, W. N. 1866, p. 279.

(*h*) *Cheltenham and Swansea Railway Carriage, &c., Co.*, 8 Eq. 580. Commenting on proceedings pending, a petition may be a contempt of Court. *Re O'Malley*, 44 Ch. D. 649.

(*i*) *A Company* [1894], 2 Ch. 349, but see the remarks on this case in *New Gold Coast Exploration Co.* [1901], 1 Ch. 860.

(*k*) As to which see the Companies Act, 1862, §§ 39, 40, and Rules, 1890, r. 35.

(*l*) These words occurred in 11 & 12 Vict. c. 45, § 10, and it was held that service on a member of the provisional committee was insufficient, *Re London and Dublin, &c.*,

there; or if no such person can be found there, then by being left at the registered office or principal place of business of the company (*m*). If it is found impracticable to comply with these directions, application must be made to the Court for leave to serve the petition upon some member of the company (*n*). These rules, however, are directory only; and if the solicitor of the company accepts service for it, service at the registered office may be dispensed with (*o*).

Where company is being wound up voluntarily.

Where a company is being wound up voluntarily, a petition to have it wound up subject to the supervision of the Court must be served on the liquidators (*p*); but, owing probably to an oversight, the rules do not require that the liquidator should be served with a petition to have the company wound up compulsorily. This, however, ought, it is conceived, to be done.

Special directions as to service.

Where a company's registered office was shut up, the Court directed the petition to be dropped into the letter-box of the office, and to be served on the company's solicitor, and on one of the directors (*q*). In another case, where the company was being wound up voluntarily, service was directed on all the directors and two or three of the principal shareholders (*r*). Service without leave of the Court on a workman at the last registered office of a company, which had long ceased to carry on business there and had amalgamated with another company, is not sufficient (*s*); but service on two directors at the actual office of the company has been held sufficient (*t*).

Defunct companies.

The rules as to service do not apply in the case of companies which have been struck off the register under the Companies

Railway Company, 3 De G. & S. 208; so service on the company's solicitor, *Ex parte Dale*, ib. 11.

(*m*) Rules, 1890, r. 35.

(*n*) Ib. For form of affidavit of service, see Rules, 1890, forms 14 and 15. Service on some member seems necessary. Under 11 & 12 Vict. c. 45, § 10, service might be dispensed with altogether. As to whether service can be dispensed with by consent, see *Re Brighton, Lewes, &c., Rail. Co.*, 1 De G. & S. 604; *Ex parte Wolesey*, 3 ib. 101; *Re Tring, Reading, &c., Rail. Co.*, ib. 10; *Regent United Service Stores*, 8 Ch. D. 75; and *Panonia Leather Cloth Co.*, 13 W. R. 1015.

(*o*) *Regent United Service Stores*, 8 Ch. D. 75.

(*p*) Rules, 1890, r. 35.

(*q*) *London and Westminster Wine Co.*, 1 Hem. & M. 561.

(*r*) *Inventors' Assoc.*, 6 N. R. 349.

(*s*) *Manchester and London Life Ass. and Loan Assoc.*, 9 Eq. 643.

(*t*) *Fortune Copper Mining Co.*, 10 Eq. 390.

Act, 1880; in such cases special directions as to service must be obtained (*u*).

Evidence in support of petition.

The petition must be verified by the affidavit of the petitioner, or one of the petitioners; or, if the petition is presented by a company, by some director, secretary, or principal officer (*x*). An affidavit by the petitioner himself will, however, be dispensed with under special circumstances (*y*); if the petition is presented by the Attorney-General, the Court will allow it to be verified by some other fit and proper person, *e.g.*, the solicitor to the Inland Revenue (*z*). Where the petitioning company was in liquidation, an affidavit by one of the liquidators, who was also the vendor in a debenture holder's action, was accepted (*a*). The affidavit must be entitled like the petition (*b*), and be sworn and filed within four days after the petition is presented (*c*); but the time will be enlarged by the Court if any reasonable grounds for so doing are shown (*d*). The statutory affidavit is sufficient *primâ facie* evidence of the statements in the petition (*e*). If any affidavits in addition to the statutory affidavit are filed in support of the petition, notice should be given to the company, so as to avoid unnecessary applications for an adjournment to answer them (*f*).

Additional evidence.

If the petition is opposed on grounds not disclosed in it, or in the affidavits filed in support of it, the additional facts necessary to be proved must be verified by affidavit.

Evidence in opposition.

Affidavits in opposition must be filed within seven days of the date on which the affidavit verifying the petition is filed,

(*u*) *Anglo-American Exploration, &c., Co.* [1898], 1 Ch. 100.

(*x*) Rules, 1890, r. 36. A form of affidavit is given, see form 17.

(*y*) *Fortune Copper Mining Co.*, 10 Eq. 390, where the petitioner was abroad. See next note.

(*z*) *Brandy Distillers' Co.*, W. N. 1901, p. 37. Wright, J., in a previous case had held that the affidavit must be made by one of the persons mentioned in the rule. *Charterland Stores, &c., Co.* [1900], 2 Ch. 870.

(*a*) *Review Publishing Co.*, W. N. 1 93, p. 5.

(*b*) See note (*x*), *ante*.

(*c*) Rules, 1890, r. 36; not before, see *Western Benefit Building Soc.*, 33 Beav. 368.

(*d*) See Rules, 1890, r. 176; *Charterland Stores, &c., Co.* [1900], 2 Ch. 870; *Patent Screwed Boot Co.*, 32 Beav. 142; *Kentish Royal Hotel Co.*, 5 N. R. 423.

(*e*) Rules, 1890, r. 36. Strictly speaking the affidavit is seldom proof of anything being hearsay as to most matters sworn to: *Gold Hill Mines*, 23 Ch. D. at p. 214. The rule, however, is a check on reckless assertions.

(*f*) Practice Direction, W. N. 1898, p. 7. Explaining *New Weighing Machine Co.*, W. N. 1896, p. 48.

and notice of the filing must be given to the petitioner or his solicitor.

Affidavits in reply.

Affidavits in reply to an affidavit filed in opposition must be filed within three days of the date on which notice of such affidavit is received (*g*).

Cross-examination.

The persons making affidavits can be cross-examined; the Court will, if necessary, order the books of the company to be produced on such cross-examination (*h*).

Appearance in support and opposition.

All persons served with the petition, and also all contributories (*i*), and creditors (*k*), but apparently no other persons (*l*), are entitled to appear on the petition, and to support or oppose it. Every person who intends to appear on the hearing must serve on, or send by post to, the petitioner at the address stated in the advertisement of the petition, notice in writing of his intention (*m*). The notice must state whether the person giving it intends to support or oppose the petition (*n*). If the petition asks for a compulsory order, and the person giving the notice intends to support a supervision order, the notice should state this (*o*). The notice must be signed by the person giving it (*p*), or his solicitor, and must be served, or if sent by post, must be posted in such time as in the ordinary course of post to reach the address not later than 6 p.m. of the day previous to the day appointed for the hearing. A person who fails to comply with the rule as to notice will not be allowed, without special leave of the

(*g*) Companies Winding-up Rules, 29th March, 1893, r. 1.

(*h*) *Emma Silver Mining Co.*, 10 Ch. 194. As to inspection of company's books, see *Credit Co.*, 11 Ch. D. 256; *West Devon Great Consols Mine*, 27 Ch. D. 106; and by an agent *Bevan* v. *Webb* [1901], 2 Ch. 59, reversing ib. [1901], 1 Ch. 724.

(*i*) An allottee of shares who has commenced proceedings to rescind his contract to take shares may appear and oppose the petition without thereby losing his right to repudiate his shares. *Tomlin's case* [1898], 1 Ch. 105.

(*k*) See *Marlborough Club Co.*, 1 Eq. 216, and the next note.

(*l*) See *Bradford Navigation Co.*, 9 Eq. 80, and 5 Ch. 600. See, also, S. C., 10 Eq. 337.

(*m*) Rules, 1892, r. 20. *Semble*, a notice need not be sent by a person who is represented by the petitioners' solicitor. *Invicta Works, Ld.*, W. N. 1894, p. 39.

(*n*) See Rules, 1890, form 15A, otherwise he will not be allowed his costs, see *Green, McAllan & Feilden, Ld.*, W. N. 1891, p. 127.

(*o*) *Woodrow, Hooper & Co.*, W. N. 1893, p. 38.

(*p*) A notice given by six named persons as a committee of creditors is merely a notice of the individuals who sign it, see *Mid Kent Fruit Factory*, W. N. 1892, p. 65.

Court, to appear on the hearing of the petition (*q*). If he is heard, he will not, as a rule, be allowed his costs (*r*).

Attendance before registrar and other matters before the hearing.

After a petition has been presented, the petitioner must, on a day appointed by the registrar, not less than two days before the day appointed for the hearing of the petition attend before the registrar and satisfy him that the petition has been duly advertised, that the statutory affidavit verifying it and the affidavit of service (if any) have been duly filed, and that the provisions of the rules as to petitions have been complied with by the petitioner; unless this be done no order will be made on his petition (*s*). The petitioner must also prepare a list of the names and addresses of the persons who have given notice of their intention to appear and of their solicitors, and a copy of the list must be handed by the petitioner into Court on the day appointed for, but prior to, the hearing of the petition (*t*). If no such notice has been received the petitioner or his solicitor should give the registrar notice of the fact (*u*).

List of persons intending to appear.

Costs.

The costs of a petition are in the discretion of the Court (*x*), but the following rules are usually followed:

Where order is made.

1. The costs of a petition on which a winding-up order is made are borne by the company (*y*); these costs include the costs of the petitioner and of the company, and the costs of all other persons, if any, properly served with the petition (*z*). But if the creditor's petition is under £50, he will not be allowed his costs in the absence of special circumstances (*zz*).

When petition is dismissed.

2. The costs of a petition which is dismissed are borne by the petitioner; unless the Court is of opinion that the petition was justifiable, in which case the dismissal will be without

(*q*) Rules, 1892, r. 20.

(*r*) *Green, McAllan & Feilden, Ld.*, W. N. 1891, p. 127; *Woodrow, Hooper & Co.*, W. N. 1893, p. 38.

(*s*) Rules, 1892, r. 18. In *Kershaw* v. *Pole, Ld.*, W. N. 1891, p. 202, a decision under the repealed rule of February, 1891, the petitioner was allowed to satisfy the registrar on these points after the hearing,

(*t*) Ib., r. 21, and form 16A in schedule to Rules, 1890.

(*u*) *Australasian Alkaline, &c., Syndicate*, W. N. 1891, p. 209.

(*x*) Comp. Act, 1862, § 86. For a special order where a petition had been transferred from the County Court, see *Laxon & Co.* (2) [1892], 3 Ch., p. 562.

(*y*) See Rules, 1890, r. 31.

(*z*) *Humber Iron Works Co.*, 2 Eq. 15.

(*zz*) See *Herbert Standring & Co.*, W. N. 1895, p. 99; *Fancy Dress Balls Co.*, W. N. 1899, p. 109, and compare *Leyton and Walthamstowe Cycle Co.*, W. N. 1901, p. 225, where the petition was supported by other creditors.

costs. If dismissed with costs, such costs include those of the company, and of all persons, if any, served with the petition (*a*).

Of persons appearing to support or oppose.

3. With respect to persons who appear to support or oppose a petition, although not served with it, the usual practice is not to allow any costs to persons who have not given proper notice of their intention to appear (*b*); and with regard to those who have given such notice, 1, to allow one set of costs to those contributories, and one set to those creditors, who upon reasonable grounds (without being served) appear on the petition and support the view which ultimately prevails—*i.e.*, support a successful, or oppose an unsuccessful, petition. If such persons are represented by the same solicitor as the petitioner or company, their names should be added to the brief for the petitioner or company, for in such a case they are not allowed costs (*c*); 2, to give no costs to those who (not being served) support an unsuccessful, or oppose a successful, petition; but, 3, to make a petitioner pay the costs of persons who appear to answer and succeed in refuting unfounded charges made against them (*d*).

Provisional liquidator.

A provisional liquidator is only in the nature of a receiver, and will not be allowed his costs of appearing on a winding-up petition (*e*).

Voluntary liquidator.

If the company is already being wound up voluntarily, or under the supervision of the Court, the voluntary liquidator will usually be allowed his costs, if the company appears by counsel instructed by him and is not separately represented (*ee*).

(*a*) *Humber Iron Works Co.*, 2 Eq. 15.

(*b*) *Green, McAllan & Feilden, Ld.*, W. N. 1891, p. 127; *Woodrow, Hooper & Co.*, W. N. 1893, p. 38.

(*c*) *Brighton Marine Palace, &c., Co.*, W. N. 1897, p. 12.

(*d*) See *Hull and County Bank*, 10 Ch. D. 130; *New Gas Co.*, 5 Ch. D. 703; *Anglo-Egyptian Nav. Co.*, 8 Eq. 660; *European Banking Co.*, 2 Eq. 521; *Anglo-Greek Steam Co.*, ib. 1; *Humber Iron Works Co.*, ib. 15. Lord Hatherley, when V.-C., refused costs to persons not served. See *Oriental Commercial Bank*, W. N. 1866, p. 283; *Hop and Malt Exchange Co.*, ib. p. 222; *Imperial Merc. Credit Ass.*, ib. p. 256.

(*e*) *General International Agency Co.*, 36 Beav. 1. He was, however, allowed some costs in *Times Life Ass., &c., Soc.*, 9 Eq. 382, and in *European Banking Co.*, 2 Eq. 521.

(*ee*) *Mont de Piété of England*, W. N. 1892, p. 166; and *Sanitary Burial Assoc.* [1900], 2 Ch. 289; *A. W. Hall & Co.*, W. N. 1885, p. 190. In *State of Wyoming Syndicate* [1901], 2 Ch. 431, a person who had been appointed liquidator by resolutions for a voluntary winding up which were invalid was allowed his costs.

Costs of preliminary inquiries.

When a petition was presented by a shareholder in a cost-book mining company, who had been sued by a creditor, and the petition was opposed on the ground that the petitioner was indebted to the company and had not been compelled to pay more than he owed to the company, and an inquiry upon that point was directed by consent, and the result showed that the petitioner had paid more than he owed the company, and a winding-up order was then made, the costs of the preliminary inquiries were thrown on those whose opposition caused them to be directed (*f*).

Withdrawal of petition.

Under the former practice a petition might be withdrawn (*g*), and ought to have been withdrawn by the petitioner as soon as his claim was satisfied (*h*); but as a general rule, he could only withdraw it on payment of the proper costs of those who appeared on it, whether to support or oppose it (*i*), though under special circumstances the Court allowed the petition to be withdrawn without payment of costs (*k*). Separate sets or only one set of costs might be given to the shareholders and creditors appearing on the petition (*l*). But now, when a petitioner consents to withdraw his petition or to allow it to be dismissed or adjourned, the Court may substitute as petitioner any creditor or contributory who in its opinion would have a right to present a petition, and who is desirous of so doing (*m*); in a proper case this may be done, and an order be made without any adjournment (*n*). Under the present practice the Court, as a rule, will not allow a petition to be withdrawn unless all the creditors of the company are arranged

Power to substitute a petitioner.

(*f*) *Re Bosworthon Mining Co.*, 26 L. J. Ch. 612. See, too, when no order was made on the petition, except that the question raised by it should be tried as on a summons, *Consolidated Exploration, &c., Co.* [1899], 2 Ch. 599.

(*g*) *Hereford and South Wales Waggon, &c., Co.*, 17 Eq. 423; *Times Life Ass., &c., Co.*, 9 Eq. 383; *Home Ass. Association*, 12 Eq. 59.

(*h*) *Times Life Ass., &c., Co.*, 9 Eq. 383.

(*i*) *Nacupai Gold Mining Co.*, 28 Ch. D. 65; *Patent Cocoa Fibre Co.*, 1 Ch. D. 617; *Hereford and South Wales Waggon, &c., Co.*, 17 Eq. 423; *Marlborough Club Co.*, 1 Eq. 216; *Home Ass. Association*, 12 Eq. 59.

(*k*) *District Bank of London*, 35 Ch. D. 576; *United Stock Exchange, Limited*, 28 Ch. D. 183.

(*l*) *Criterion Gold Mining Co.*, 41 Ch. D. 146; *Paper Bottle Co.*, 40 Ch. D. 52; *North Brazilian Sugar Factories*, 56 L. T. N. S. 229; explained in *Peckham Tramways Co.*, 57 L. J. Ch. 462.

(*m*) Rules, March, 1893, r. 2.

(*n*) *Invicta Works, Ld.*, W. N. 1894, p. 39.

with, or an opportunity has been given (*e.g.*, by ordering the petition to stand over for a week) to any other creditor or contributory to apply to be substituted as petitioner.

Costs of adjournment.

If the petition is adjourned, the general rule is not to allow any costs of the adjournment, unless they are specially ordered.

Supervision order instead of compulsory order.

The petitioner, on the hearing of his petition, may elect to take a supervision order instead of a compulsory order, but the Court may require the petition to stand over to be readvertised (*o*). If in such a case a supervision order is made, the costs of creditors who appear to support the petition for a compulsory order will be allowed, though they may have opposed the supervision order (*p*).

Several petitions.

There is nothing to prevent the presentation of several petitions by several persons, but this practice has always been discouraged as much as possible by the Courts (*q*).

Former practice.

Under the former practice it sometimes happened that persons presented petitions in ignorance that a petition had already been presented, and when this was the case they were generally allowed the costs incurred by them before they had notice of the previous petition (*r*); but persons who, without some special justification, presented petitions, or proceeded with petitions they had already presented, after they knew of the presentation of a petition earlier than their own, ran great risk of having to pay the costs incurred by themselves, if not also the costs of the persons they served (*s*). Where, however, the first petition was presented by persons in the interest of the company, and was of a suspicious character, a second petition was considered justifiable (*t*); and where there were several justifiable petitions and a winding-up

(*o*) See *ante*, p. 884.

(*p*) *Chepstow Bobbin Mills Co.*, 36 Ch. D. 563.

(*q*) In *United Ports and General Ins. Co.*, 39 L. J. Ch. 146, V.-C. K., the priority of several petitions was determined by the dates of their advertisements, but the date of presentation usually determines the priority; see *Building Societies Trust, Ld.*, 44 Ch. D. 140.

(*r*) *General Financial Bank*, 20 Ch. D. 276; *G. F. Brooke & Co.*, W. N. 1888, p. 213.

(*s*) See, on this subject, *Building Societies' Trust, Ld.*, 44 Ch. D. 140; *Ex parte Turner*, 3 De G. & S. 127; *Times Fire Ass. Co.*, 30 Beav. 596; and the cases in the next note.

(*t*) *General Financial Bank*, 20 Ch. D. 276; *Humber Iron Works Co.*, 2 Eq. 15; *Commercial Discount Co.*, 1 N. R. 416.

order was made, one order was usually made on all the petitions, and the costs of them all were paid by the company (*u*); one set of costs being allowed to the unserved creditors and one to the unserved contributories appearing and supporting the petitions (*x*). Each, however, of several petitions must be dealt with on its own merits (*y*).

Present practice.

Under the present practice it is hardly possible for a second petition to be presented in ignorance of the first; if a person wishing to present a petition finds one has already been presented, his proper course is to give the necessary notice and appear in support of that petition, and, if necessary, apply to be substituted for the petitioner (*z*).

Security for costs.

If a petition is presented by a limited company (*a*), or by a person resident out of the jurisdiction, or in the case of a life insurance company by a policy-holder or a contributory (*b*), or if the petitioner before the hearing has filed a petition in bankruptcy (*c*), the petitioner can, in a proper case, be compelled to give security for costs before his petition is heard; and such security can be applied for, either when the petition comes on for hearing (*d*) or before (*e*); and the respondent does not lose his right to security by filing affidavits in opposition to the petition (*f*). Persons opposing the petition cannot be ordered to give security for costs (*g*).

Death of petitioner.

If a petitioner dies between the presentation and hearing of the petition, his personal representatives may obtain leave to continue and carry on the petition (*h*).

(*u*) See the cases in the last two notes, *Doré Gallery, Ld.*, W.N. 1891, p. 98, and *Ex parte Walker*, 1 De G. & Sm. 585.

(*x*) *Ante*, p. 890.

(*y*) *European Bank Co.*, 2 Eq. 521. As to the carriage of the order in such cases, see *infra*, p. 923.

(*z*) Rules of March, 1893, and *ante*, pp. 888 and 891.

(*a*) See the Companies Act, 1862, § 69, and *ante*, pp. 376, 377.

(*b*) 33 & 34 Vict. c. 61, § 21. In this case security for costs is necessary, and a condition precedent to the hearing of the petition.

(*c*) *Carta Para Mining Co.*, 19 Ch. D. 457, but compare *Rhodes* v. *Dawson*, 16 Q. B. D. 548.

(*d*) *Home Ass. Assoc.* (No. 2), 12 Eq. 112; *Ex parte Seidler*, 12 Sim. 106.

(*e*) *Atkins* v. *Cooke*, 3 Drew. 694.

(*f*) See last note but one, and *Martano* v. *Mann*, 14 Ch. D. 419; *Lydney and Wigpool Co.* v. *Bird*, 23 Ch. D. 358, and R. S. C. Ord. LXV. r. 6, which leaves the amount of the security to be given in the discretion of the judge.

(*g*) *Percy and Kelly Nickel, &c., Co.*, 2 Ch. D. 531.

(*h*) *Dynevor Duffryn Collieries Co.*,

Appeals from and staying proceedings under winding-up orders.

Improper orders.

A winding-up order made by a Court having no jurisdiction to make it, is wholly invalid, and must be so treated although not appealed against (*i*); but an order made by a Court having jurisdiction must be treated as valid until reversed on appeal (*k*). Under the older winding-up Acts, if an order were made upon the petition of a person not entitled to petition, the order was not void; but it, and all proceedings under it, were allowed to stand, and its further prosecution was, upon a proper application to the Court, entrusted to a qualified person (*l*). There is no express provision to this effect in the Companies Act, 1862, but the old winding-up practice is so continued that probably the above rule would still be observed (*m*).

Appeal from the winding-up order.

After an order for the winding up of a company has been made, such order may be appealed from in the ordinary way (*n*), by a person entitled to appear and be heard on the petition (*o*) in 14 days (*p*); but unless he appeared at the hearing, he must

W. N. 1878, p. 199, and see *Atkins' Estate*, 1 Ch. D. 82; *Commercial Bank of London*, W. N. 1888, pp. 213 and 234.

(*i*) *Plumstead Water Co.* v. *Davis*, 28 Beav. 545, and 2 De G. F. & J. 20.

(*k*) *Padstow Total Loss Assoc.*, 20 Ch. D. 137; *Arthur Average Assoc.*, 3 Ch. D. 522; *Ex parte Hargrove*, 10 Ch. 542; *London Marine Ins. Assoc.*, 8 Eq. 189 and 193; *Ex parte Oakes and Peek*, W. N. 1867, p. 101, and L. R. 2 H. L. 369.

(*l*) 11 & 12 Vict. c. 45, § 9.

(*m*) See the Companies Act, 1862, §§ 82, 170; the latter section was repealed by 44 & 45 Vict. c. 59, but see § 4 of that Act.

(*n*) 25 & 26 Vict. c. 89, § 124. A company successfully appealing was allowed its costs out of its own estate in *National Savings Bank Association*, 1 Ch. 554.

(*o*) See *Bradford Navigation Co.*, 5 Ch. 600.

(*p*) See R.S.C., Ord. LVIII. rr. 9 and 15; *National Funds Ass. Co.*, 4 Ch. D. 305. The time may be extended by the Court of Appeal, as to which, see *New Callao*, 22 Ch. D. 484; *Manchester Economic Building Society*, 24 Ch. D. 488; *Madras Irrigation and Canal Co.*, 23 Ch. D. 248. Before the Judicature Acts, the limit formerly of twenty-one days did not apply to appeals from winding-up orders. See *Re Universal Bank*, 1 Ch. 428; *Anglo-Californian Mining Co.*, 1 Dr. & Sm. 628; *Plumstead Water Co.*, 2 De G. F. & J. 20. The fact that calls had been made and other proceedings taken did not prevent an appeal. See *National Permanent Benefit Building Soc.*, 5 Ch. 309.

obtain special leave to appeal (*q*). The appointment of a liquidator does not prevent the directors of the company authorising an appeal (*r*), but when a limited company appeals without joining anyone personally responsible for costs, it will as a rule be ordered to give security for the costs of the appeal (*s*). It does not follow that because the order is appealed against, proceedings under it will be stayed until the appeal is disposed of (*t*).

Discharge of order and rehearing.

Before the Judicature Acts, a winding-up order might have been discharged on motion or petition by the judge who made it; but now no judge can rehear or alter an order, whether made by himself or another judge, after it has been passed and entered, provided it accurately expresses the intention of the Court; the power to rehear is part of the appellate jurisdiction and has been transferred to the Court of Appeal (*u*).

Staying proceedings under order.

Cases may occur in which a winding-up order has been rightly made, but in which its further prosecution is not desirable, as for instance when the Court wishes to reduce the contracts of a life insurance society instead of making an order to wind the society up (*x*). In such a case, application should be made to the Court which made the order, to stay the proceedings under it. This the Court has power to do on the application of any creditor or contributory (*y*); the application should be by notice of motion (*z*); and the Court will accede to the application if it is satisfied that it is not for the advantage of the company, or of any of the persons

(*q*) See *Securities Ins. Co.* [1894], 2 Ch. 410.

(*r*) *Diamond Fuel Co.*, 13 Ch. D. 400.

(*s*) *Diamond Fuel Co.*, 13 Ch. D. 400; *Photographic Artists' Association*, 23 Ch. D. 370.

(*t*) See R. S. C., Ord. LVIII. r. 16, and *Ex parte Barber*, 1 Mac. & G. 183.

(*u*) *Preston Banking Co.* v. *William Allsup & Sons* [1895], 1 Ch. 141; *St. Nazaire Co.*, 12 Ch. D. 88; *Manchester Economic Building Soc.*, 24 Ch. D. 488. *Secus* if the order has not been passed and entered, *Crown Bank*, 44 Ch. D. 634, or there has been a slip in drawing it up, R. S. C., Ord. XXVIII. r. 11.

(*x*) *Great Britain Mutual Life Assurance Soc.*, 16 Ch. D. 247.

(*y*) See § 89 of the Companies Act, 1862. A person applying as an alleged contributory must admit himself to be a contributory. See *ante*, p. 844.

(*z*) Rules, 1892, r. 5. *Baxter's, Limited*, W. N. 1898, p. 60. The judge may direct these applications to be heard in chambers. See Rules, 1892, rr. 3 and 4. In such a case the application should be by summons, r. 5.

Worcester, Tenbury, &c., Railway Company.

interested in its winding up, that further proceedings should be taken (*a*). Thus in the case of *The Worcester, Tenbury, and Ludlow Railway Company* (*b*), a winding-up order had been made, an official manager had been appointed, all the company's debts had been paid, and a surplus remained. It had been found impossible to make out a complete list of contributories, as the allottees of a considerable number of shares could not be discovered, but the known allottees held the great bulk of the shares which had been issued. Upon their petition the Court ordered the fund in Court to be paid to them, they undertaking to deal with it as the Court should direct, and to pay the costs incurred in the winding up. So proceedings will be stayed in order to enable a company to resume business if circumstances justify such an order (*c*).

Winding-up order in the nature of a judgment.

But a winding-up order is in the nature of a judgment for the benefit as well of creditors as of contributories (*d*); and proceedings under it cannot be stayed without giving those who have acquired rights consequent upon it an opportunity of opposing the application to stay proceedings (*e*). Consequently, an order to stay proceedings will not be made, unless the contributories, and the creditors who have proved their debts, have had proper notice of the intention to apply for the order; and such an order will not, therefore, be made upon notice of a motion to discharge a call (*f*), or to be struck off the list of contributories (*g*).

Costs to be provided for on staying proceedings.

Again, where an order has been obtained and acted on and costs have been incurred under it, these costs must be provided for by those who seek to have further proceedings stayed (*h*).

(*a*) In *Ex parte Barber*, 1 Mac. & G. 176, proceedings pending an appeal were not stayed.

(*b*) 3 De G. & S. 189.

(*c*) *South Barrule Slate Quarry Co.*, 8 Eq. 688.

(*d*) See § 82 of the Companies Act, 1862.

(*e*) See *Carew's case*, 5 De G. Mac. & G. 94; *Underwood's case*, ib. 677; *Clifton's case*, ib. 743. As to serving the provisional liquidator, see *Ex parte Coleman*, 3 De G. & S. 139.

(*f*) *Carew's case*, 5 De G. M. & G. 94, reversing S. C., 2 Sm. & G. 1.

(*g*) *Underwood's case*, 5 De G. M. & G. 677; *Sharpus's case*, 3 De G. & S. 49.

(*h*) *Clarke's case*, 1 K. & J. 22; *Ex parte Woolmer*, 5 De G. & S. 117, and 2 De G. M. & G. 665.

SECTION VI.—EFFECT OF WINDING UP AS REGARDS DEALINGS WITH PROPERTY.

1. *Commencement of winding up.*

1. Compulsorily.

When a petition is presented to wind up a company by the Court, the commencement of the winding up dates from the presentation of the petition (*i*). Hence the importance, when there are several petitions, of making a winding-up order, if possible, on that first presented. But if the petition is dismissed, the winding up commenced on its presentation will *obviously* be at an end.

2. Voluntarily.

When a resolution has been passed to wind up a company voluntarily, the voluntary winding up dates from the passing of the resolution (*k*). But if the company is afterwards ordered to be wound up compulsorily, the commencement of the winding up will date from the time of the presentation of the petition on which the order is made (*l*); but not so as to invalidate what has been done or to let in a distress which has not been completed (*m*). The consequence of altering the date of the commencement of a winding up is sometimes a good reason for not making a compulsory order when a company has been for some time winding up voluntarily.

3. Subject to supervision.

An order to wind up a company subject to the supervision of the Court pre-supposes a prior resolution to wind up voluntarily, and in fact continues the voluntary winding up. The commencement, therefore, of a winding up subject to *supervision* dates from the passing of the resolution to wind up voluntarily, and not from the time of the presentation of the petition on which the order is made (*n*); and this is the

(*i*) § 84. *Taurine Co.*, 25 Ch. D. 118.

(*k*) § 130, *i.e.*, the confirmation of the resolution when the resolution is special. See *Emperor Life Assurance Society*, 31 Ch. D. 78; *Dawes' case*, 6 Eq. 232, and *infra*, ch. 2.

(*l*) § 84. *Taurine Co.*, 25 Ch. D. 118.

(*m*) *Thomas* v. *Patent Lionite Co.*, 17 Ch. D. 250.

(*n*) *Emperor Life Assurance Society*, 31 Ch. D. 78; *Weston's case*, 4 Ch. 20, and 6 Eq. 238; *Ex parte Colborne and Strawbridge*, 11 Eq. 478, §§ 148, 151, and 164. Compare *Ex parte Bradshaw*, 15 Ch. D. 472, where for the purpose of fixing the date of a debenture-holder's charge, the date, at which a provisional liquidator was appointed, was taken. See as to charges of debenture-holders, *ante*, p. 325.

case although a provisional liquidator has been appointed, and a compulsory order made before the resolution for a voluntary winding up was passed, if the compulsory order is subsequently changed into a supervision order (*o*); and the Court has no jurisdiction to alter this date (*p*).

Compulsory order after supervision order.

It seems that if a compulsory order is made after an order to wind up under supervision, the date of the commencement of the winding up is not altered by the second order (*q*).

Life insurance companies.

As regards life insurance companies which have transferred their business to others, the enactment contained in 35 & 36 Vict. c. 41, § 4 (*r*), must not be forgotten; it in effect makes the commencement of the winding up of the purchasing company the commencement of the winding up of the selling company, unless the Court otherwise orders; but the enactment does not apply to a purely voluntary winding up.

Importance of the commencement of winding up.

The exact time of the commencement of the winding up of a company is important, inasmuch as after that time great restrictions are put on all dealings with the property of the company, on all alterations in the status of its members, and on all proceedings by creditors to enforce payment of their debts. The leading principle pervading the winding-up provisions of the Companies Act, 1862, is that nothing shall be done after the commencement of the winding up of a company except with a view to realise its assets and distribute them rateably first among its creditors, and then, if there is a surplus, amongst its members (*s*).

(*o*) *Emperor Life Assurance Society*, 31 Ch. D. 78; *Dry Docks Corporation of London*, 39 Ch. D. 306.

(*p*) *West Cumberland Iron and Steel Co.*, 40 Ch. D. 361.

(*q*) See *United Service Co.*, 7 Eq. 76, where a company was being wound up voluntarily, and an order was made on one petition to continue such winding up, subject to supervision, and a compulsory order was made on another petition, and was dated the day after the first order. *Sed qu.*, see *Taurine Co.*, 25 Ch. D. p. 140.

(*r*) *Ante*, p. 868.

(*s*) This will be seen by examining the following sections, 85, 87, 95, 98, 102, 107, 109, 133, 153, 158, 163, 164, and 196 to 204. And see *Ashbury's case*, 5 Eq. 223, and *Ex parte Grissell*, 1 Ch. 528.

2. *Effect of winding up on dealings with property.*

Lis pendens.

A petition to wind up a company compulsorily is not a *lis pendens* (*t*), nor is a winding-up order a judgment *in rem* (*u*).

Retrospective effect of order to wind up.

When an order has been made to wind up a company compulsorily, or subject to the supervision of the Court, all dispositions of the property, effects, and things in action of the company made subsequently to the commencement of the winding up of the company are void unless confirmed by the Court (*x*).

The winding-up order has thus a retrospective effect; and the section in question apparently even renders void all dispositions of property made previously to the order by voluntary liquidators unless the Court expressly sanctions them (*y*).

After a winding-up order has been made, no disposition of the company's property is valid unless made by the liquidators or the Court (*z*).

After a resolution to wind up voluntarily, no disposition of a company's property can, it is apprehended, be made, except by the liquidators (*a*).

It will be observed that what are avoided are dispositions by the company of its property, not transfers or payments to it, *e.g.*, not a transfer of shares to the company (*b*), nor payment of a debt to it (*c*).

Payments by company.

Payments by the company after the commencement of the winding up are, however, avoided, unless sanctioned by the Court; and this rule applies even to the payment of a petitioning creditor's debt if an order is made on his petition or on any petition presented previously to it (*d*).

In a recent case it was held that a customer of the Oriental Bank Corporation, who had paid money in at a branch office

(*t*) 30 & 31 Vict. c. 47. See, before this Act, *Ex parte Thornton*, 2 Ch. 171.

(*u*) *Bowling and Welby's Contract* [1895], 1 Ch. 663.

(*x*) § 153.

(*y*) See, also, § 151. But *quære* if this is the true construction.

(*z*) See §§ 92 and 95.

(*a*) See §§ 131 and 133.

(*b*) *Ex parte Contract Corporation*, 3 Ch. 105.

(*c*) *Mersey Steel and Iron Co.* v. *Naylor, Benzon & Co.*, 9 App. Ca. 434, and 9 Q. B. D. 648.

(*d*) *Ex parte Greenwood*, 9 Ch. 511; *Daly & Co.*, 19 L. R. Ir. 83.

of the bank in the Mauritius in exchange for drafts on the head office in London, after the presentation of a petition in London to wind up the bank, and the appointment of a provisional liquidator, but before any notice of these facts had, or could have, reached the Mauritius, had no right to have his money refunded, but was only entitled to prove in the winding up for the amount of the drafts *pari passu* with other creditors (*e*).

Bonâ fide sales, &c., upheld.

The Court will, however, confirm *bonâ fide* sales (*f*), mortgages (*g*), or other dispositions of the company's property made in the interval which elapses between the presentation of the petition and the winding-up order. Further, if the property in goods sold in that interval has passed to the purchaser, the Court will order the liquidator to deliver such goods to him (*h*); but if the property has not passed, the purchaser cannot obtain the goods; he can only prove against the company in respect of damages (*i*).

Liens.

Liens acquired on a company's property before the commencement of the winding up are not avoided (*k*); and if a debt due to a company has been equitably assigned before a petition to wind it up is presented the assignee's title is not affected by a subsequent winding-up order (*l*). But a lien cannot be acquired after the winding up has commenced, *e.g.*, a solicitor cannot retain documents of the company come to his hands since that date (*m*). A solicitor can, however, after the winding up has commenced, obtain a charging order under the Solicitors Act, 1860, for his costs on a fund in Court belonging to the company and recovered by him before the commencement of the winding up; for in such a case the charging order is only a cheap and effective way of enforcing his existing common law lien (*n*).

Solicitor's liens.

Wiltshire Iron Company *v.* Great Western Railway Company.

In connection with this subject, an important decision of the Court of Queen's Bench and Exchequer Chamber requires

(*e*) *Ex parte Guillemin*, 28 Ch. D. 634.

(*f*) *Pearson's case*, 3 Ch. 443.

(*g*) *Gibbs and West's case*, 10 Eq. 342.

(*h*) *Pearson's case*, 3 Ch. 443.

(*i*) Ib.

(*k*) See the next two notes, and the authorities there cited.

(*l*) *Gorringe* v. *Irwell India Rubber &c., Works*, 34 Ch. D. 128.

(*m*) *Capital Fire Ins. Assoc.*, 24 Ch. D. 408.

(*n*) *Re Born* [1900], 2 Ch. 433.

notice. A company had agreed that a carrier should have a general lien on all goods carried for it; the company was ordered to be wound up, and the liquidator continued to employ the carrier without coming to any fresh agreement with him. The carrier sought to detain goods sent by the liquidator until he should pay the debt due from the company; but it was held that the carrier was not entitled to do so (*o*). The Court seems to have thought that the winding-up order put an end to the previous agreement for a lien, and that the goods sent by the liquidator were not the goods of the company. But it is submitted that neither of these views was correct. As, however, there was no plea on equitable grounds, the Court was not in a position to give due weight to the difference between an equitable security and a common law lien.

Floating charges.

The effect of a winding up on floating charges on the company's assets has been already discussed (*ante*, pp. 325 *et seq.*).

Fraudulent preference.

Where a company is being wound up, whether by the Court or subject to its supervision, or voluntarily, the doctrines of fraudulent preference are applicable to it; and with reference to these doctrines, the presentation of the petition in the first two cases, and the resolution to wind up in the last case, is equivalent to an act of bankruptcy (*p*).

It has been decided that a disposition of property, which is invalid on grounds of fraudulent preference, can be set aside in an action instituted by the company itself (*q*); but no disposition of a company's property can be impeached on the ground of fraudulent preference, except for the benefit of the general body of creditors (*r*); and the disposition must have been made in contemplation of a winding up, and without

(*o*) *Wiltshire Iron Co.* v. *Great Western Rail. Co.*, L. R. 6 Q. B. 101 & 776, not followed in *Llangennoch Coal Co.*, W. N. 1887, p. 22.

(*p*) § 164; Bankruptcy Act, 1883, § 48; *Kent's case*, 39 Ch. D. 259; *Inns of Court Hotel Co.*, 6 Eq. 82; *Syke's case*, 13 Eq. 255. Compare *Poole, Jackson and Whyte's case*, 9 Ch. D. 322.

(*q*) *Gas Light Improvement Co.* v. *Terrell*, 10 Eq. 168.

(*r*) *Willmott* v. *London Celluloid Co.*, 34 Ch. D. 147, affirming 31 Ch. D. 425, where it was held that debenture-holders could not take advantage of this doctrine to recover money exclusively for their own benefit; and see *Ex parte Cooper*, 10 Ch. 510.

pressure (*s*). Pressure, however, by a director of an insolvent company to obtain security for a debt owing to himself by that company has been held not to be enough (*t*). Nor will a payment, which would otherwise be a fraudulent preference, be rendered valid because the directors who made it considered themselves under a moral obligation to make it (*u*). But a payment will not be a fraudulent preference unless the governing motive in the mind of the person making it is to prefer the person to whom it is made (*x*). If the payment is made with the object of conferring a benefit on some other person, *e.g.*, of relieving a director who has guaranteed payment of the debt from his liability (*y*), it will not be a fraudulent preference. Moreover, there can be no fraudulent preference if at the time of the payment the person who receives the payment is the only creditor (*z*). Any person who has a right to prove in the winding up is a creditor within the meaning of the fraudulent preference clause (*a*). A member of an industrial and provident society, who has given no notice of withdrawal, is not a creditor of the society for the amount standing to his credit as a member (*aa*).

Mutual credit. The mutual credit clause (§ 38) of the Bankruptcy Act, 1883, is not applicable to companies which are being wound up, where its application would be inconsistent with the provisions of the Companies Acts. This clause, therefore, does not enable a shareholder to set off a call against a debt due to him from the company, when the company is being

(*s*) *Seligman* v. *Prince & Co.* [1895], 2 Ch. p. 626; *Inns of Court Hotel Co.*, 6 Eq. 82; *Ex parte Birmingham Banking Co.*, 6 Ch. 83. N.B.—It is not every disposition of property which would be an act of bankruptcy, that is void under § 164. See the last case.

(*t*) *Gas Light Improvement Co.* v. *Terrell*, 10 Eq. 168, and observe that the security there included all the company's property. Compare *Habershon's case*, 5 Eq. 287, and see *Syke's case*, 13 Eq. 255.

(*u*) *Buckley's case* [1899], 2 Ch. 725. Compare *Ex parte Saffery* [1900], 2 Q. B. 324, and cases in the next note.

(*x*) See generally as to this, *Ex parte Dyer* [1901], 1 K. B. 710; *Sharp* v. *Jackson* [1899], A. C. 419, and Partn., pp. 645 *et seq.*

(*y*) *Stenotyper, Limited* [1901], 1 Ch. 250, and compare *Blackpool Motor Car Co.* ib. 77, where a charge given to the surety himself was held to be a fraudulent preference.

(*z*) *Seligman* v. *Prince & Co.* [1895], 2 Ch. p. 626.

(*a*) *Blackpool Motor Car Co.* [1901], 1 Ch. 250. But see, as to trustee and *cestui que trust*, *Ex parte Dyer* [1901], 1 K. B. 710.

(*aa*) *Dovey* v. *Morgan* [1901], 2 K. B. 477.

wound up. Such a set-off, therefore, if made within three months before the commencement of the winding up, may amount to a fraudulent preference and be invalid (*b*).

Reputed ownership.

The doctrines of reputed ownership have no application to companies which are being wound up (*c*).

Creditor's deeds.

All conveyances or assignments by a company formed under the Act of 1862 to trustees for the benefit of all its creditors, are wholly void (*d*).

Transfers of shares, &c.

The effect of the commencement of the winding up of a company on transfers of shares and the status of members and agreements with them will be examined hereafter (*e*).

3. *Effect of winding up on legal proceedings against the company and its members.*

a) Old law.

No part of the law relating to the winding up of companies has been more altered or improved than that which relates to the rights of creditors to enforce payment of their debts by ordinary legal proceedings (*f*). Under the Winding-up Acts of 1848 and 1849 it was held (*g*)—

Acts of 1848 and 1849.

1. That a winding-up order *per se* did not prevent a creditor of the company from obtaining and executing judgments against it or its members (*h*).

2. That a winding-up order, and the appointment of an interim manager, did not preclude a creditor from obtaining judgment against the company or its members, or from enforcing a judgment against the latter; but merely precluded

(*b*) *Washington Diamond Mining Co.* [1893], 3 Ch. 95; *Kent's case*, 39 Ch. D. 259. Compare *Poole, Jackson and Whyte's case*, 9 Ch. D. 322.

(*c*) *Gorringe* v. *Irwell India Rubber Works*, 34 Ch. D. 128; *Crumlin Viaduct Works Co.*, 11 Ch. D. 755.

(*d*) § 164.

(*e*) *Infra*, § 13, R. 1, and *ante*, p. 653.

(*f*) See *ante*, pp. 820 *et seq.*

(*g*) The statements in the text apply to the creditors suing in the ordinary Courts of law. Creditors suing in the Stannary Courts were in a much worse position, for their proceedings were stayed by the mere presentation to the Court of Chancery of a petition for winding up, and notice thereof to the Vice-Warden. See 12 & 13 Vict. c. 108, § 1, and 20 & 21 Vict. c. 78, §§ 12 & 13. It was, however, decided that a creditor was not entitled to appear and oppose the petition, *Tretoil and Messer Mining Co.*, 2 J. & H. 421.

(*h*) *Re India and Australia Steam Packet Co.*, 17 Sim. 15; *Hill* v. *London and County Assurance Co.*, 1 H. & N. 398; *Re Phillips*, 18 Beav. 629.

the judgment creditor from intermeddling with the property of the company protected by the interim manager (*i*).

3. That after a winding-up order, and the appointment of an official manager, proceedings by a creditor of the company against the company or its members would be stayed until the creditor had, so far as he was able, proved his debt in the winding up (*k*).

4. That this last rule did not apply to persons in a position to sue one or more individuals by virtue of some contract binding on them, otherwise than as members of the company, *e.g.*, upon some separate undertaking or promissory note, on which they were personally liable (*l*).

5. That a creditor of the company who had, so far as he was able (*m*), proved his debt in the winding up, was at liberty to proceed to enforce his demand against the company or its members without further hindrance or delay, save that he could not seize the property of the company vested in the official manager. Therefore the Court of Chancery would not restrain such creditor from issuing execution against a contributory (*n*); nor would a Court of law withhold from a judgment creditor of the company permission to enforce payment of his debt from the individuals liable to pay it (*o*); nor was there anything to prevent such a creditor from suing the official manager for the purpose of obtaining a judgment decree, or order against him (*p*), or from afterwards enforcing

(*i*) *Brettell* v. *Dawes*, 7 Ex. 307.

(*k*) *Hutchinson* v. *Harding*, 11 Ex. 561; *Thompson* v. *Univeral Salvage Co.*, 3 Ex. 310; *Macgregor* v. *Keiley*, 4 Ex. 801; *Prescott* v. *Hadow*, 5 Ex. 726; *Marson* v. *Lund*, 13 Q. B. 664. But non-proof in the winding up was no defence to an action, *Mackenzie* v. *Sligo, &c., Rail. Co.*, 18 Q. B. 862.

(*l*) *Re Sudlow and Kingdom*, 12 Beav. 527; *Penkivil* v. *Connell*, 5 Ex. 381; *Beardshaw* v. *Londesborough*, 11 C. B. 498. See, too, *Macgregor* v. *Keiley*, 4 Ex. 801; *Dover and Deal Rail. Co.*, 17 Sim. 18.

(*m*) An unsatisfactory affidavit of debt is not sufficient proof, *Hutchinson* v. *Harding*, 11 Ex. 561.

(*n*) *Re Dover and Deal Rail. Co.*, 17 Sim. 18; *Re Phillips*, 18 Beav. 629; *Prichard's case*, 5 De G. M. & G. 484.

(*o*) *Morisse* v. *Royal Brit. Bank*, 1 C. B. N. S. 67; *Palmer* v. *Justice Assurance Society*, 6 E. & B. 1015; *Hill* v. *London and County Assurance Co.*, 1 H. & N. 398; *Carroll* v. *Kennedy*, 6 Ir. Com. Law Rep. 11; *Mackenzie* v. *Sligo, &c., Rail. Co.*, 4 E. & B. 119.

(*p*) *Robson* v. *M'Creight*, 25 Beav. 272; *Thompson* v. *Norris*, 5 De G. & S. 686.

such judgment, decree, or order against the individuals represented by him (q).

Alterations made by 20 & 21 Vict. c. 78.

By 20 & 21 Vict. c. 78, however, these rights of the creditors of a company which was being wound up under the Acts of 1848 and 1849, were materially altered. For in the first place, the Master or Judge acting in the winding up was empowered to call upon the creditors, by advertisement, to meet and choose one or more persons, other than the official manager, to represent them in the winding up; and after they had been thus called upon by advertisement, the creditors became parties to the winding up (r).

When leave to sue was required.

In the next place, as soon as the creditors had chosen, or had been required to choose, representatives, no action or suit could be either commenced or prosecuted by any creditor against the official manager or the company, or any other person representing the same, or any person as a contributory thereof, except by leave of the Master or Judge acting in the winding up (s). It was not, however, incumbent on the Master or Judge to require the creditors to choose a representative; and until they were required to do so, their right to sue was not affected (t).

(b) Under the Companies Act, 1862.

The Companies Act, 1862, proceeds upon an entirely different principle; the leading idea being that when the winding up of a company has once commenced, its creditors ought to be paid *pari passu* (u). In order to give effect to this principle the Act enables the Court, when a company is being wound-up either compulsorily or voluntarily (x), to stay

(q) But a judgment against the official manager of a so-called company which has no capacity to sue or be sued, either by a corporate name or by a public officer, cannot be enforced against the individuals composing such company, *Re Weiss*, 15 C. B. 331.

(r) 20 & 21 Vict. c. 78, § 1. See *Mexican and South American Mining Co.*, 26 Beav. 172.

(s) Ib. § 7. Such leave was obtained in Chambers, *Royal British Bank*, 3 Jur. N. S. 1114. If not obtained, the Court in which the action was brought would stay proceedings, *Thomas* v. *Wells*, 16 C. B. N. S. 508. See, as to judgment creditors, *Barnes* v. *Thrupp*, 3 Jur. N. S. 1242.

(t) *Robson* v. *M'Creight*, 25 Beav. 272. See, also, *Ex parte Tobin*, 7 W. R. 4.

(u) See *ante*, p. 898, note (s), and *Ex parte Grissell*, 1 Ch. 528; *Ashbury's case*, 5 Eq. 223; *Wiltshire Iron Co.* v. *Great Western Rail. Co.*, L. R. 6 Q. B. 101 & 776.

(x) See §§ 85, 87, 138, 163.

actions and executions, not only against companies which are being wound up, but also against their members in those cases in which such proceedings against them individually can still by law be taken.

It has been already pointed out that the members of a company formed and registered under the Companies Act, 1862, or under the former Acts of 1856-8, are not liable to be proceeded against personally by action in respect of the debts of the company (*y*); but it may be otherwise as regards companies not formed under these Acts; and it therefore becomes material for the present purpose to distinguish companies of the first class from those of the second.

a) As regards companies formed and registered under the Act.

1. Where company is being wound up by the Court.

Restraining actions, &c.

With respect to companies formed and registered under the Companies Act, 1862, or under the repealed Acts of 1856-8 (*z*), it is enacted that at any time after the presentation of the petition, and before any winding-up order is made upon it, the Court may, upon the application of the company, or any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding against the company (*a*); and further, that after a winding-up order is made, no action, suit, or other proceeding, including an application to rectify the register under § 35 of the Companies Act, 1862 (*b*), shall be proceeded with or commenced against the company, except with the leave of the Court, and subject to such terms as the Court may impose (*c*). Moreover, where a company is being wound up by the Court, or subject to the supervision of the Court, any attachment, sequestration, distress or execution, put in force against the estate or effects of the company after the commencement of the winding up, is declared to be void to all intents (*d*).

(*y*) See *ante*, pp. 390 *et seq.*

(*z*) See §§ 176 & 177 of the Companies Act, 1862.

(*a*) Companies Act, 1862, § 85.

(*b*) *Onward Building Society* [1891], 2 Q. B. 463.

(*c*) Ib. § 87.

(*d*) Ib. § 163; *Ex parte Fourdrinier*, 21 Ch. D. 510. In *Harford* v. *Amicable, &c., Asso. Co.*, Ir. L. R. 5 Com. Law, 368, the Court set aside a judgment entered up against a company after it had been ordered to be wound up. See *infra*.

Where company is being wound up voluntarily.

There are no similar provisions expressly applicable to companies which are being wound up voluntarily; but upon the application of the liquidators or any of the contributories or creditors of such companies, the Court is empowered to restrain creditors from proceeding with actions, executions, &c., in like manner as it can where a company is being wound up by the Court (*e*); and this power has been exercised on several occasions (*f*).

Where company is being wound up under supervision.

Where a company is being wound up under the supervision of the Court, the Court has the same jurisdiction over actions, &c., as it has when the company is being wound up compulsorily (*g*).

These enactments do not apply to proceedings by the Crown (*h*).

Notwithstanding the clear words of § 163 they have been construed as controlled by § 87, and the Court has declared itself competent to allow attachments, &c., to proceed, if to stop them will deprive the person putting them in force of all remedy against the company (*i*). But an attachment, &c., which is void under § 163 is void altogether—*i.e*, as against secured creditors, and not only as against the company (*k*).

It is necessary to notice in greater detail the numerous decisions on the foregoing enactments with respect to actions, executions, and distresses.

(*e*) § 138. Amended by Companies Act, 1900, § 25. See before the Act of 1900, *Thomas* v. *Patent Lionite Co.*, 17 Ch. D. at p. 257.

(*f*) Actions stayed, *Freeman* v. *General Publishing Co.* [1894], 2 Q. B. 380; *Keynsham Co.*, 33 Beav. 123; *Life Assurance Co. of England*, 10 Jur. N. S. 762; *Thames Plate Glass Co.* v. *Land and Sea Telegraph Co.*, 11 Eq. 248; and 6 Ch. 643; *Walker* v. *Banagher Distillery Co.*, 1 Q. B. D. 129; *Rose & Co.* v. *Gardden Lodge Coal Co.*, 3 Q. B. D. 235. Execution stayed, *Poole Fire Brick and Blue Clay Co.*, 17 Eq. 268; *Sablonière Hotel Co.*, 3 Eq. 74; *Peninsular Banking Co.*, 35 Beav. 280. See, too, *Westbury* v. *Twigg & Co.* [1892], 1 Q. B. 77. And as to distress for rent, *Roundwood Colliery Co.* [1897], 1 Ch. 373; *Shackell & Co.* v. *Chorlton & Sons* [1895], 1 Ch. 378.

(*g*) §§ 148 to 151.

(*h*) *Oriental Bank Corporation, Ex parte The Crown*, 28 Ch. D. 643; *Henley & Co.*, 9 Ch. D. 469.

(*i*) *Exhall Coal Mining Co.*, 4 De G. J. & S. 377; *Ex parte Carnelley*, 35 Ch. D. 656; *Wanzer, Limited* [1891], 1 Ch. 305, a Scotch sequestration.

(*k*) *Ex parte Fourdrinier*, 21 Ch. D. 510.

Staying actions.

As regards actions.—When the Court is asked to stay an action, the only material question to be considered is, whether there are any circumstances which render it necessary that the action should be continued, or whether the claim of the plaintiff is not one which can be as easily dealt with in the winding up as in any other way. If the claim sought to be enforced is capable of being satisfactorily dealt with in the winding up, other proceedings to enforce it will be stayed (*l*); but the costs already incurred by the creditor will be added to his debt (*m*). Even where a company is being wound up voluntarily, actions against it will be stayed upon these terms (*n*). The Court may order the plaintiff to pay the costs of the application to stay his action (*o*).

Actions allowed to proceed.

If the Court is of opinion that the action ought not to be stopped, *e.g.*, where an action is instituted against directors or other individuals as well as against the company, the Court will allow the proceedings to go on (*p*), but will require the plaintiff to undertake not to issue execution against the company without the leave of the Court (*q*). If the plaintiff succeeds in his action his costs will be added to his debt (*r*). So the Court has allowed a suit to go on until the defendants have answered, but no further (*s*).

(*l*) *Hermann Loog, Limited*, 36 Ch. D. 502, action in Scotland; *International Pulp and Paper Co.*, 3 Ch. D. 594, action in Ireland; *Australian Direct Steam Nav. Co.*, 20 Eq. 325, a suit to enforce a maritime lien, and compare *Rio Grande do Sul Steamship Co.*, 5 Ch. D. 282. See now, as to the existence of a lien in such cases, Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60), § 167. *Re Briton Medical Assur. Assoc.*, 32 Ch. D. 503, summonses to recover penalties. See, also, the next note.

(*m*) *Keynsham Co.*, 33 Beav. 123; *Life Assurance of England*, 10 Jur. N. S. 762; *Rose & Co.* v. *Gardden Lodge Coal Co.*, 3 Q. B. D. 235, where the plaintiff's costs of appearing on the application to stay proceedings were not allowed.

(*n*) See *Rose & Co.* v. *Gardden Lodge Coal Co.*, 3 Q. B. D. 235; *Poole Fire Brick, &c., Co.*, 17 Eq. 268, and other cases, *ante*, p. 907, note (*f*).

(*o*) *Freeman* v. *General Publishing Co.* [1894], 2 Q. B. 380.

(*p*) As in *Wyley* v. *Exhall Coal Co.*, 33 Beav. 538; *Hall* v. *Old Talargoch, &c., Co.*, 3 Ch. D. 749, and *Rio Grande do Sul Steamship Co.*, 5 Ch. D. 282.

(*q*) *McEwen* v. *London and Bombay and Mediterranean Bank*, W. N. 1866, p. 407; *Hagell* v. *Currie*, ib. 1867, p. 75. See, too, the terms imposed in *Thurso New Gas Co.*, 42 Ch. D. 486.

(*r*) *Thurso New Gas Co.*, 42 Ch. D. 486.

(*s*) *Thames Plate Glass Co.* v. *Land and Sea Telegraph Co.*, 11 Eq. 248, and 6 Ch. 643.

Secured creditors.

A mortgagee or secured creditor will not be restrained from enforcing his rights against the property comprised in his security (*t*). If in the course of proceedings for another object a plaintiff has acquired a security over the company's property, these proceedings will be restrained without prejudice to the security so acquired (*u*). A judgment creditor who has obtained an order appointing a receiver by way of equitable execution does not become a secured creditor merely by obtaining the order (*x*).

Applications for leave to continue proceedings.

Applications for leave to continue proceedings against a company which has been ordered to be wound up should, it is apprehended now, be made to the Court which made the order, and in the case of the High Court to the judge exercising the jurisdiction to wind up companies (*y*); and should be made by summons at chambers (*z*). If the judge gives leave to proceed, the Appeal Court will not interfere (*a*).

Receivers.

The liquidator ought, as a general rule, to be the receiver in actions in which receivers are necessary (*b*).

Transfer of actions, &c., pending winding-up. R. S. C., Ord. XLIX., r. 5.

By Order XLIX. r. 5, of the Rules of the Supreme Court, 1883, "when an order has been made by any judge of the Chancery Division for the winding up of any company, the judge in whose Court such winding up shall be pending shall have power, without any further consent, to order the transfer to such judge of any cause or matter pending in any other Court or division brought or continued by or against such company" (*c*). By the Companies (Winding-up) Rules, where

(*t*) *Wanzer, Limited* [1891], 1 Ch. 305, Scotch urban landlord enforcing his hypothec; *West Cumberland Iron Co.* [1893], 1 Ch. 713, a creditor secured by "arrestment" of the company's property in Scotland, allowed to proceed with his action. See, too, *Minna Craig Steamship Co.* v. *Chartered Mercantile Bank, &c.* [1897], 1 Q. B. 55 & 460, as to enforcement of a German judgment *in rem*. As to debenture-holders' actions, see *ante*, pp. 340 *et seq.*

(*u*) *Queensland Mercantile, &c., Co.* [1892], 1 Ch. 219, action in Scotland for damages, plaintiff "arrested" calls on company's shares in Scotland. *Flack's case* [1894], 1 Ch. 369.

(*x*) *Croshaw* v. *Lyndhurst Ship Co.* [1897], 2 Ch. 154. See, too, *Ex parte Taylor* [1893], 1 Q. B. 648.

(*y*) See *Wilson* v. *Natal Investment Co.*, W. N. 1867, p. 68.

(*z*) *Hagell* v. *Currie*, W. N. 1867, p. 75. See also Rules, 1892, rr. 4 & 5.

(*a*) *Thames Plate Glass Co.* v. *Land and Sea Telegraph Co.*, 6 Ch. 643.

(*b*) See *ante*, pp. 341 *et seq.*

(*c*) The winding up jurisdiction is now exercised by two judges of the Chancery Division, see *ante*, p. 829, where the earlier orders are noticed. Compare Ord. LI., r. 2A,

an order has been made in the High Court for the winding up of a company on a petition presented on or after 1st January, 1891, the judge of the High Court who for the time being exercises the jurisdiction in winding up has a similar power (*d*). These rules do not authorise the transfer of actions by a mortgagee or debenture-holder for the purpose of realising his security or of actions which are not brought to enforce payment of a debt or demand provable in the winding up (*e*). These excepted actions can only be transferred by order of the Lord Chancellor (*f*). Debenture-holders' actions brought against companies which are being wound up compulsorily in the High Court are assigned to the judge having jurisdiction in the winding up (*g*).

Costs.

The Court has no power to order the costs of an action which has been dismissed by consent in consequence of the company being wound up, to be paid out of the assets of the company, although the action was brought by shareholders for the benefit of the company (*h*).

Recovery of penalties.

Proceedings before a magistrate to recover penalties from a company may be restrained (*i*).

Applications to stay actions, &c.

An application to stay an action in the High Court should be made to the division, or if in the Chancery Division to the judge to whom the action is attached by summons in the action, and not to the judge who exercises the winding-up jurisdiction of the Court (*k*). To stay other actions application must be made to him.

of the Rules of 1875, and *Madras Irrigation Co.*, 16 Ch. D. 702, correcting *Landore Siemens Steel Co.*, 10 Ch. D. 489.

(*d*) Rules, 1892, r. 14. As to the jurisdiction of the Registrar in such cases see ib. and Rules of August, 1892; and as to the application of the Winding-up Rules thereto, see Rules of August, 1892, r. 3.

(*e*) Rules, 1892, r. 14 (3).

(*f*) R. S. C. Ord. XLIX., r. 1. Such orders are commonly made in the case of debenture-holders' actions.

(*g*) Practice Master's Rules, Annual Practice, 1902, p. 1012.

(*h*) *Hull Central Drapery Co.*, 15 Ch. D. 326.

(*i*) *Briton Medical, &c., Assoc.*, 32 Ch. D. 503.

(*k*) Jud. Act, 1873, § 24, cl. 5; *General Service Co-operative Stores* [1891], 1 Ch. 497; *Artistic Colour Printing Co.*, 14 Ch. D. 502; *Walker* v. *Banagher Distillery Co.*, 1 Q. B. D. 129; *People's Garden Co.*, 1 Ch. D. 44; *Needham* v. *Rivers Protection Co.*, ib. 253; *Perkins Beach Lead Mining Co.*, 7 Ch. D. 371, and *Kingchurch* v. *People's Garden Co.*, 1 C. P. D. 45, *contra*.

When a winding-up petition has been presented and has not been heard, the usual practice is to apply *ex parte* to have actions stayed until the petition is heard or disposed of; and an order to this effect is generally granted, on the usual undertaking being given as to damages. This practice was adopted, after consideration, by V.-C. Wickens in *London and Suburban Bank* (*l*), and has been followed since the Judicature Acts by all the divisions of the High Court.

County Courts.

Although County Courts having jurisdiction under the Companies (Winding-up) Act, 1890, have for the purposes of that jurisdiction all the powers of the High Court (*m*), they have no power to restrain actions in the High Court (*n*).

Staying executions.

As regards executions.—The Court is much more reluctant to stay executions than other proceedings. To interfere with a creditor whose legal right is established, and who is about to reap the fruit of a successful litigation, is a strong measure scarcely to be justified by considerations of hardship to the debtor, but possibly justifiable on the principle that equality is equity, and that it is unjust to other creditors that one shall obtain payment in full whilst little or nothing is left for them. Even as between creditors, however, some preference is fairly the reward of extra diligence; and where a creditor has actually issued execution against a company before a petition to wind it up has been presented, and the sheriff is in possession when it is presented, the Court will not interfere and deprive the creditor of the fruits of his diligence (*o*), unless under very special circumstances, *e.g.*, of oppression or fraud (*p*). But, as a rule, if the sheriff does not seize before the commencement of the winding up, the execution will be stayed (*q*). In one case, indeed, of this description the creditor

Executions levied before a winding-up order.

(*l*) 19 W. R. 950.

(*m*) See § 1 (6) and *ante*, p. 831.

(*n*) *Ex parte Reynolds*, 15 Q. B. D. 169, a decision under the Bankruptcy Act.

(*o*) *Withernsea Brickworks*, 16 Ch. D. 337; *Parry's case*, 4 De G. J. & Sm. 63. See, also, *London Cotton Co.*, 2 Eq. 53, where the sheriff was kept out of possession; *Bastow, &c., Co.*, 4 Eq. 681.

(*p*) See *Perkins Beach Lead Mining Co.*, 7 Ch. D. 371; *Hill Pottery Co.*, 1 Eq. 649, where the sheriff had seized before the petition was presented.

(*q*) See *Ex parte Railway Steel and Plant Co., In re Williams*, 8 Ch. D. 192; *London and Devon Biscuit Co.*, 12 Eq. 190, where the writ was

was allowed to proceed, but was put under terms as to what property he should seize (*r*); and in another, where the proceedings were in Scotland, he was allowed to proceed under his judgment, but on the terms that he should have no priority over the other creditors in the winding up, and that so far as the proceedings in the action interfered with the winding up he should do all in his power to enable the liquidator to get in the company's assets in Scotland (*s*). In two other cases creditors, who had obtained judgment before the commencement of the winding up, but had at the request of the company refrained from issuing execution, were allowed in one case to issue execution after the commencement of the winding up, and in the other case to have the same advantages as if the sheriff had seized before the winding up had commenced (*t*). It has, however, been doubted in a later case whether the fact of the creditor having given time to the company is sufficient to entitle him to such an indulgence (*u*); but if the company has behaved in such a way as to make it unfair for it to restrain a creditor from proceeding on his judgment, the Court will allow execution to issue (*x*). On other occasions, where the execution preceded the petition to wind up, the Court, whilst staying the execution, has directed the liquidator to sell for the benefit of the execution creditor (*y*), thus substantially securing to him the fruits of his diligence. *À fortiori* will the Court not interfere with an execution creditor who has actually got his money before the winding-up order is made (*z*).

Executions levied after a winding-up order.

Executions issued after a petition for a winding-up order has been presented stand in a different position, and are

lodged before the petition was presented. In a voluntary winding up, *Westbury* v. *Twigg & Co.* [1892], 1 Q. B. 77, and see *ante*, p. 907, note (*f*).

(*r*) *Bastow, &c., Co.*, 4 Eq. 681. See the cases in note (*q*).

(*s*) *Thurso New Gas Co.*, 42 Ch. D. 486, a winding up under supervision.

(*t*) *Richards & Co.*, 11 Ch. D. 676; *Ex parte Railway Steel and Plant Co., In re Taylor*, 8 Ch. D. 183.

(*u*) *Vron Colliery Co.*, 20 Ch. D. 442.

(*x*) *Rudow* v. *Great Britain Mutual Life Ass. Soc.*, 17 Ch. D. 600.

(*y*) *Hill Pottery Co.* 1 Eq. 649; *Plas yn Mhowys Coal Co.*, 4 Eq. 689; *Ex parte Railway Steel and Plant Co., In re Taylor*, 8 Ch. D. 183. See, also, *Dublin Exhibition Co.*, Ir. Rep. 2 Eq. 158.

(*z*) *Ex parte Hawkins*, 3 Ch. 787.

stopped (*a*). But the Court will not interfere with creditors who have obtained judgments against the company in actions brought by or against it by its liquidators (*b*). Indeed, it is very doubtful whether the statutory provisions in question have any application to such a case.

Property in foreign country.

Executions may be stayed, though the property seized may be in a foreign country (*c*). If, however, the creditor is entitled under the law of that country to priority or to a security on the property situated there by reason of the proceedings he has taken, his rights thereunder will be preserved, at any rate if such priority or security was acquired before the commencement of the winding up (*d*).

Procedure in voluntary winding up.

If the company is being wound up voluntarily the liquidator should apply to stay the execution, and not let the execution proceed and raise the question of his right to the fruits of it in interpleader proceedings (*e*).

Garnishee orders.

In the case of an execution by a writ of *fi. fa.*, the important date is that on which the sheriff seizes; in the case of an attachment of a debt by means of a garnishee order (*f*), or of a charging order under Order XLVI. of the Rules of the Supreme Court (*g*), the date to be considered is the date on which the order *nisi* is served; in other respects the rules applicable to the stay of these forms of proceedings are the same.

Charging order.

Equitable execution.

A judgment creditor who obtains an order for the appointment of a receiver by way of equitable execution, does not thereby become a secured creditor; if, therefore, an order is made to wind up the company before the order appointing the receiver has been acted upon, the Court will not, apart from

(*a*) *Ex parte Railway Steel and Plant Co., In re Williams*, 8 Ch. D. 192; *Waterloo Life Ins. Co.*, 31 Beav. 589; *Peninsular Banking Co.*, 35 Beav. 280. See, also, *Universal Disinfector Co.*, 20 Eq. 162; *Dimson's Estate Fire Clay Co.*, 19 Eq. 202, where leave to issue execution was refused.

(*b*) See *Re Mackrill Smith*, 3 Ch. 125; *Re Levick*, 5 Eq. 69.

(*c*) *Ex parte Scinde Rail. Co.*, 9 Ch. 557.

(*d*) Ib., and *Flack's case* [1894], 1 Ch. 369; *Queensland Mercantile, &c., Co.* [1892], 1 Ch. 219. See, too, *Minna Craig Steamship Co.* v. *Chartered Mercantile Bank, &c.* [1897], 1 Q. B. 55 and 460.

(*e*) *Westbury* v. *Twigg & Co.* [1892], 1 Q. B. 77.

(*f*) *Stanhope Silkstone Collieries Co.*, 11 Ch. D. 160; *National United Investment Corp.* [1901], 1 Ch. 950. See *Hamer* v. *Giles*, 11 Ch. D. 942.

(*g*) *Haly* v. *Barry*, 3 Ch. 452.

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special circumstances, allow the order to be further proceeded with (*h*).

Judicature Act, 1875, § 10.

It has been decided that section 10 of the Judicature Act, 1875, did not introduce into the winding up of companies section 87 of the Bankruptcy Act, 1869, which deprived execution creditors of the fruits of their execution, where the sheriff had notice of the bankruptcy within fourteen days after sale (*i*); and the same reason excludes the application of sections 45 (*k*) and 46 of the Bankruptcy Act, 1883.

Staying distresses.

As regards distresses.—The 10th section of the Judicature Act, 1875, does not place a landlord in the position of a secured creditor by reason of his power of distress, nor give him the priority for six months' rent, which is conferred upon landlords by the Bankruptcy Acts (*l*). As regards re-entry, the Court will not prevent a landlord from exercising his power of re-entry, if his right to enter under the terms of the lease is clear (*m*).

Scotch sequestration.

A sequestration for rent by a Scotch landlord is within § 163 of the Companies Act, 1862, but as by Scotch law an urban landlord is in a position analogous to a secured creditor, he will be permitted to take sequestration proceedings after the commencement of the winding up (*n*).

Where landlord cannot prove for the rent.

The sections of the Companies Act, 1862, under consideration only apply to a landlord who seeks to distrain upon goods of a company, which is his legal tenant. Therefore in *New City Constitutional Club Co.* (*o*), the Court decided that it could

New City Constitutional Club Company.

(*h*) *Croshaw* v. *Lyndhurst Ship Co.* [1897], 2 Ch. 155.

(*i*) *Ex parte Railway Steel and Plant Co., In re Taylor*, 8 Ch. D. 183; *Withernsea Brickworks*, 16 Ch. D. 337; *Richards & Co.*, 11 Ch. D. 676. *Printing and Numerical Registering Co.*, 8 Ch. D. 535, is overruled, and see *infra*, p. 1001.

(*k*) *National United Investment Corp.* [1901], 1 Ch. 950, and *Pratt* v. *Inman*, 43 Ch. D. 175.

(*l*) *Thomas* v. *Patent Lionite Co.*, 17 Ch. D. 250; *Bridgewater Engineering Co.*, 12 Ch. D. 181; *Coal Consumers' Co.*, 4 Ch. D. 625, and *infra*, p. 1003. *Stockton Iron Furnace Co.*, 10 Ch. D. 335, can no longer be relied upon as an authority to the contrary.

(*m*) *General Share Co.* v. *Wetley Pottery Co.*, 20 Ch. D. 260. § 163 of the Companies Act, 1862, does not apply to such a case.

(*n*) *Wanzer, Ld.* [1891], 1 Ch. 305.

(*o*) *Ex parte Pursell*, 34 Ch. D. 646. The debenture-holders after the hearing of the action in the Court of first instance, offered to give up their charge on the chattels in favour of the liquidator. The Court of Appeal held this could not affect the landlord's right, which must be ascertained from the state of circumstances

not prevent a landlord from distraining upon goods which, although originally the property of the company, had ceased to be so by being charged for more than their full value in favour of debenture holders. Again, when the landlord has no right of proof against the company, *e.g.*, where the company is not the legal tenant (*p*) of the landlord but is the undertenant (*q*) or the *cestui que trust* (*r*) of his lessee, the Court will not restrain the landlord from levying a distress on the company's goods, even although the company may offer to allow him to prove for his rent in the winding up (*s*). In one case of this sort the Court allowed a distress although the landlord held the company's promissory note for the rent, and could therefore prove for it (*t*). But this case has been questioned, and not without reason (*u*).

In cases of this class, *i.e.*, where the company is not tenant to the person distraining, it is immaterial whether the rent, for which the landlord seeks to distrain, accrued due before, or after, the commencement of the winding up, for the landlord not being a creditor of the company in respect of his rent, has no right to prove for it in the winding up (*x*).

Where landlord can prove for the rent.

If the landlord is the legal creditor of the company in respect of the rent, which he wishes to recover by a distress upon the company's goods, and has put in a distress before the commencement of the winding up he will be allowed to proceed with his distress unless there are special reasons rendering it inequitable for the distress to go on (*y*); but if he has not put in a distress he must, in order to obtain leave to distrain under section 87, show either that it is inequitable for

at the commencement of the winding up. *Harpur's Cycle Fittings Co.* [1900], 2 Ch. 731. As to the position of debenture holders, see *ante*, p. 321. And as to the liability of a receiver for rent, *ante*, p. 809.

(*p*) *Lundy Granite Co.*, 6 Ch. 462.

(*q*) *Carriage Co-operative Supply Association*, 23 Ch. D. 154; *Regent United Service Stores*, 8 Ch. D. 616.

(*r*) *Exhall Coal Mining Co.*, 4 De G. J. & S. 377.

(*s*) *Regent United Service Stores*, 8 Ch. D. 616. See, also, *Lundy Granite Co.*, 6 Ch. 462.

(*t*) *Ex parte Clemence*, 23 Ch. D. 154.

(*u*) *Ex parte Pursell*, 34 Ch. D. 646; *Harpur's Cycle Fittings Co.* [1900], 2 Ch. 731.

(*x*) See the cases in the last five notes, and the next two notes.

(*y*) *Roundwood Colliery Co.* [1897], 1 Ch. 373, the case of a voluntary winding up, where the distress was put in before the resolution for a voluntary winding up was confirmed.

the company to insist on section 163, or that the rent ought to be paid in full as one of the expenses of the winding up (z). In applying these principles to any given case it is important to ascertain whether the rent for which the landlord seeks to distrain accrued due before, or after, the commencement of the winding up. If the rent accrued due before the commencement of the winding up, the landlord will not be allowed to distrain (a), even though the liquidator may have retained possession of, and carried on the company's works upon the land (b); the landlord must prove for his debt like any other creditor (b). If the rent accrued since the commencement of the winding up, the landlord will be allowed to distrain for it, or receive payment in full, if the liquidator has retained possession of the property for the purposes of the winding up, or for carrying on the company's business, or in order to sell it or do the best he can with it; for under these circumstances the rent is considered as one of the expenses of the winding up, and should be paid in full, like any other debt properly incurred by the liquidator (c). But if the liquidator has retained possession by arrangement with the landlord for his benefit as well as for that of the company, or has done nothing, but

Rent due before winding up.

Rent due after winding up.

(z) *Oak Pits Colliery Co.*, 21 Ch. D. 330; *Lancashire Cotton Spinning Co.*, 35 Ch. D. 656. A mortgagee who has a power of distress under an attornment clause, is in a less favourable position for obtaining leave to distrain than an ordinary landlord. Ib. and *Higginshaw Mills and Spinning Co.* [1896], 2 Ch. 544, and *Brown, Bayley, and Dixon*, 18 Ch. D. 649.

(a) *Traders' North Staffordshire Carrying Co.*, 19 Eq. 60, where the distress was for tolls in arrear; *Coal Consumers' Association*, 4 Ch. D. 625, where the liquidator retained possession, but not for any purpose of liquidation; *Thomas* v. *Patent Lionite Co.*, 17 Ch. D. 250, where distress was levied after a resolution for a voluntary winding up had been passed, but before the order for a compulsory winding up, which superseded the voluntary winding up, had been made.

(b) *North Yorkshire Iron Co.*, 7 Ch. D. 661; *Brown, Bayley, and Dixon*, 18 Ch. D. 649 (case of a mortgagee with power of distress); *South Kensington Co-operative Stores*, 17 Ch. D. 161; *Oak Pits Colliery Co.*, 21 Ch. D. 322; *Maryport Haematite, &c., Co.* [1892], 1 Ch. 415; see the order on p. 426.

(c) *Lundy Granite Co.*, 6 Ch. 462; *North Yorkshire Iron Co.*, 7 Ch. D. 661; *Silkstone and Dodworth Iron Co.*, 17 Ch. D. 158; *South Kensington Co-operative Stores*, 17 Ch. D. 161; *Brown, Bayley, and Dixon*, 18 Ch. D. 649; *Oak Pits Colliery Co.*, 21 Ch. D. 322. See, too, in the case of a receiver, *Hand* v. *Blow* [1901], 2 Ch. 721.

has merely abstained from trying to get rid of the property, and has not agreed to pay rent, the landlord will not be allowed to distrain, but must prove for the rent in the winding up (*d*). If the rent has accrued due partly before and partly after the commencement of the winding up, and the landlord establishes his right to distrain, or be paid in full, for the latter portion of the rent, the rent will be apportioned and the distress will be allowed for so much as accrued after the winding up commenced (*e*). In a case (*f*) in which rent was payable two quarters in advance, if demanded, the company went into liquidation on the 20th December, and the liquidator continued to occupy the premises for the purposes of the winding up. The quarter's rent due on the 25th December not having been paid, the landlord demanded payment of the rent for that quarter and for the next two quarters in advance, and proceeded to distrain. Under these circumstances it was held that the rent for the December quarter must be apportioned, that the landlord must prove for the rent accruing up to the 20th December, but was entitled to be paid in full for the remainder of the December quarter and for so much of the next two quarters as the liquidator should continue to occupy the premises for the purposes of the winding up; but that if, during the next two quarters, he ceased to occupy the premises for that purpose, the landlord must prove for the balance of the rent for those quarters.

Rent due partly before and partly after winding up.

Rent payable in advance.

Questions of a similar nature have arisen in respect to rates. It was settled that the local authorities had no right (under § 10 of the Judicature Act, 1875) to be paid in full rates due at the commencement of the winding up in priority to other debts (*g*). As these rates were debts provable in the winding up, the overseers were not allowed to distrain for them after the winding up had commenced (*h*), and inasmuch as rates,

Rates before winding up.

(*d*) *Progress Assurance Co.*, 9 Eq. 370; *Bridgewater Engineering Co.*, 12 Ch. D. 181; *Oak Pits Colliery Co.*, 21 Ch. D. 322.

(*e*) *South Kensington Co-operative Stores*, 17 Ch. D. 161.

(*f*) *Shackell & Co.* v. *Chorlton & Sons* [1895], 1 Ch. 378. The liquidator was still in occupation when the proceedings were taken. The winding up was voluntary.

(*g*) *Albion Steel and Wire Co.*, 7 Ch. D. 547; *Art Engraving Co.*, W. N. 1889, p. 38. Bankruptcy Act, 1883, § 40.

(*h*) The Court would have allowed

unlike rent, cannot be apportioned, if a rate had been assessed before the commencement of a winding up for a period which extended beyond that date, the local authorities were not entitled to receive any portion in full, but had to prove for the whole (*i*). Now, however, by the Preferential Payments in Bankruptcy Act, 1888 (*k*), all parochial or other local rates due from a company at the commencement of the winding up and which have become due within twelve months next before that time, have been given a priority and are to be paid, *pari passu* with certain other preferential debts, if possible in full, and at once.

Rates after winding up.

The rights of the local authorities with respect to rates assessed after the commencement of the winding up, have given rise to some difference of opinion. In the two earliest cases on the subject (*l*), payment in full was refused on the ground that the liquidator's occupation of the property had not been beneficial, in that he had made no profit by it. The Court of Appeal, however, in the other two cases which have arisen (*m*), did not approve of this test, but in both cases ordered the rates to be paid in full, though the liquidator had made no profit out of his occupation, on the ground that the occupation of the property was continued with a view to the more advantageous realisation of the company's assets. In the latter of these two cases Lord Justice Bowen expressed an opinion, in which Lord Justice Fry concurred, that the true test is whether the liquidator's occupation has been beneficial within the ordinary meaning of that expression in cases of

a distress to be levied before the commencement of a winding up, although a provisional liquidator might have been appointed. See *Dry Docks Corporation of London*, 39 Ch. D. 306.

(*i*) Rates are not within the Apportionment Act, 33 & 34 Vict. c. 35, and as the occupation by the company before the winding up is the same occupation as that by the liquidator afterwards, there is no change of occupation, so as to allow the rate to be apportioned under the Public Health Act, 1875, 38 & 39 Vict. c. 55, § 211, sub-s. (3). *Wearmouth Crown Glass Co.*, 19 Ch. D. 640. For the liability of a receiver of debenture holders for rates, see *ante*, pp. 333, 334.

(*k*) 51 & 52 Vict. c. 62; amended by 60 & 61 Vict. c. 19, see *infra*, pp. 998 *et seq.* As to Ireland, see 52 & 53 Vict. c. 60, and 60 & 61 Vict. c. 19.

(*l*) *West Hartlepool Iron Co.*, 34 L. T. N. S. 570; *Watson, Kipling & Co.*, 23 Ch. D. 500.

(*m*) *International Marine Hydropathic Co.*, 28 Ch. D. 470; *National Arms Co.*, ib. 474.

rating, and this opinion has since been accepted as correct (*n*). The Court will not, except in a very extreme case, take into consideration complaints by the liquidator as to the unreasonable amount of the rates; if the assessment is wrong, he should appeal against it in the ordinary way (*o*).

b) As regards companies not formed under the Act.

The winding-up provisions of the Companies Act, 1862, and of the Companies (Winding-up) Act, 1890, apply, as has been seen, not only to companies formed and registered under it, but also to other companies (*p*). As regards actions, executions, &c., against companies themselves, it is not material to distinguish those formed under the Act from other companies (*q*). But in the case of a company not formed under the Act of 1862, or under the prior Acts of 1856—1858, creditors of the company may be entitled to proceed against members individually; and accordingly the Act of 1862 contains provisions enabling the Court, before any winding-up order is made, to stay such proceedings upon the application of any creditor both when the company has been registered (*r*) and when it has not (*s*): only a creditor, however, is entitled to apply for a stay of such proceedings (*t*). But after a winding-up order has been made, no action, suit, or other legal proceeding can be commenced or proceeded with against any contributory in respect of any debt of the company except with the leave of the Court, and subject to such terms as the Court may impose (*u*). The reasons already noticed for making a distinction between actions on the one hand, and executions on

(*n*) *Blazer Fire Lighter, Ld.* [1895], 1 Ch. 403.

(*o*) *National Arms Co.*, 28 Ch. D. 474; and see *Watson, Kipling & Co.*, 23 Ch. D. 500.

(*p*) *Ante*, pp. 834 *et seq.*

(*q*) See *Rudow* v. *Great Britain Mutual Life Assurance Society*, 17 Ch. D. 600, and §§ 196 to 198, and 199, 201, 202, and 204 An action against liquidators in whom the company's property is vested under § 203 in their official capacity can be stayed as an action against the company, *Graham* v. *Edge*, 20 Q. B. D. 538; on appeal the action was decided to be against the liquidators personally, see ib. 683.

(*r*) § 197.

(*s*) § 201.

(*t*) See the sections 197 and 201.

(*u*) §§ 198 and 202, and see as to a voluntary winding up, § 138, amended by the Companies Act, 1900, § 25. As to the Court to apply to, see *ante*, p. 910.

the other, and the decisions referred to in connection with that distinction ought to be borne in mind when considering these enactments (*x*).

Debts contracted before registration.

Where a debt has been contracted by an unincorporated company, and the company is afterwards registered, members who have retired before the time of registration do not become members of the incorporated company. Consequently, even although such company may be afterwards wound up, the common law liabilities of persons who had ceased to be shareholders before the registration of the company remain wholly unaffected, and may be enforced as if the company had never been registered or ordered to be wound up.

Lanyon v. Smith.

Thus in *Lanyon* v. *Smith* (*y*), a cost-book mining company was formed, and whilst the defendant was a member of it the debt to the plaintiff was contracted; the defendant sold and transferred his shares and ceased to be a shareholder; afterwards the company was registered and ordered to be wound up. The defendant's name was placed on the list of contributories as a past member, but the plaintiff nevertheless sued him at law; and the Court of Queen's Bench held that the action ought not to be stayed, inasmuch as the defendant never was a member of the company being wound up, and his name ought not to have been placed on the list of contributories of that company.

SECTION VII.—PROCEEDINGS UNDER COMPULSORY WINDING-UP ORDERS.

1. *Generally.*

General practice.

Rules under the Companies (Winding-up) Act, 1890.

The changes introduced into the winding up of companies in England and Wales by the Companies (Winding-up) Act, 1890, necessitated a considerable change in the practice of the Courts which exercise jurisdiction under that Act. In consequence a large body of Rules have been issued to carry into effect the objects of the Act (*z*). These Rules, which are

(*x*) *Ante*, p. 911.

(*y*) 3 B. & Sm. 938. *Harvey* v. *Clough*, 2 New R. 204, Ex., was a precisely similar case. See, also, *Fountain's case*, 11 Jur. N. S. 553.

(*z*) Companies Act, 1890, § 26. Rules are made by the Lord Chancellor, with the concurrence of the

laid before Parliament, have effect as if enacted by the Act itself (*a*), and speaking generally, apply to all Courts which exercise jurisdiction under it (*b*). The Court which will be referred to in the following pages will, however, be the High Court of Justice in England (*c*), the reader being referred to the Acts and Rules themselves for information as to other Courts. The most important of these Rules are contained in the Companies (Winding-up) Rules, 1890, and the Companies (Winding-up) Rules, 1892. The Rules of 1890 repealed the Rules of 1862 so far as they relate to proceedings in the winding up of any company which is being wound up by the Court under a compulsory order made after the 31st December, 1890 (*d*). In the interval between the 31st December, 1890, and the 6th May, 1892, when the Rules of 1892 came into force (*f*), the practice in winding up was in a state of transition between the old and the present

President of the Board of Trade. Fees are regulated by the Lord Chancellor with the sanction of the Treasury, ib. § 26 (1). The Board of Trade may issue orders regulating matters of an administrative as distinguished from a judicial character, and may change the forms in the Appendix to the Rules which relate to such matters. See Rules, 1890, rr. 3 and 175.

(*a*) See § 26 (2). As to the statutory effect of such Rules, see *Institute of Patent Agents* v. *Lockwood* [1894], A. C. 347; *Ex parte Foreman*, 18 Q. B. D. 393.

(*b*) See as to the Palatine Courts the Act of 1890, § 26 (5). As to the sittings of County Courts, Rules, 1890, rr. 18 and 19. There are differences connected with the hearing of matters in Court or Chambers, see Rules, 1890, rr. 2 (*b*), 5 and 6, and Rules, 1892, rr. 2–5, and other minor matters, *e.g.*, Rules, 1892, rr. 2–17, apply only to the High Court. See generally as to the practice of other Courts, Rules, 1890, r. 178. As to County Courts exercising jurisdiction under the Stannaries Court Abolition Act, 1896, see County Court Stannaries Jurisdiction Rules, 1897, which are incorporated in the County Court Rules as Order Lc; and as to the winding up of Benefit Building Societies and Industrial and Provident Societies by such Courts, see County Court Rules, Order XLIA., r. 32.

(*c*) The Act does not apply to Scotland or Ireland.

(*d*) Rules, 1890, r. 180. The Rules of 1862, so far as they relate to proceedings in a voluntary winding up and a winding up under supervision, are, with certain modifications, still in force (see Rules, 1892, r. 17), and will be found in the Appendix. For the practice in proceedings under a compulsory order to which the Rules of 1862 apply, the reader is referred to the Rules themselves and to the former editions of this work.

(*f*) Rules, 1892, r. 37.

practice; but it has not been thought necessary specially to allude to the practice during this interval, inasmuch as the Rules of 1892 apply to all proceedings in the winding up of companies in respect of which the petition was presented or the first application to the Court was made on or after the 1st January, 1891, unless such proceedings were retained by the Judge before whom they were pending when the Rules came into operation (*g*). In the present place, therefore, the existing practice in the High Court will be alone adverted to.

Present practice of the High Court.

In all proceedings in the High Court for which no provision is made by the Act of 1890, or the Rules thereunder, the practice and regulations are, unless the Court otherwise directs, in accordance with the Rules of the Supreme Court and the practice of the High Court (*h*). Those matters only which have special reference to the winding up of companies will be found discussed in the following pages, and for detailed information on minor points of practice the reader is referred to the Companies Acts and to the Rules which, with a full index to them, will be found in the Appendix.

Form of order.

A compulsory winding-up order is in the following form, "This Court doth order that the —— company be wound up by this Court under the provisions of the Companies Acts, 1862 to 1890, and that ——, the Official Receiver attached to the Court, be constituted provisional liquidator of the affairs of the company" (*k*). Under the Winding-up Acts of 1848 and 1849, the order dissolved the company (*l*); but, under the Act

(*g*) Ib. r. 1. These Rules apply to the winding up of companies generally, whether their winding up be compulsory, voluntary, or under supervision, and were like the Rules of August, 1892, and November, 1895, made under the Judicature Act, 1881 (44 & 45 Vict. c. 58, § 19), as well as under the Companies Acts, 1862 to 1890.

(*h*) Rules, 1890, r. 178.

(*k*) See Rules, 1890, form 18, and as to note at foot of the order, see ib. r. 38. For a form of order giving the liquidator power to act without the previous sanction or interference of the Court, see *Rochdale Property and General Finance Co.*, 12 Ch. D. 775.

(*l*) See 11 & 12 Vict. c. 45, § 16, and form 2 in the schedule; *Ex parte Barber*, 1 Mac. & G. 183; *Re North of England Banking Co.*, 1 De G. & S. 545; and *Re Newcastle, &c., Bank*, 17 Beav. 470.

of 1862, the company is not dissolved until the winding up is completed (*m*).

Notice of the order.

When a winding-up order is made, a copy of the order is to be sent by the company to the registrar of joint stock companies (*n*). The registrar of the Court must give notice of the order to the Official Receiver on the day on which it is pronounced (*o*), and send him three copies of it (*p*). The Official Receiver must serve a copy of the order on the company (*q*), and give notice of it to the Board of Trade, whose duty it is to advertise it in the *London Gazette* (*r*). The Official Receiver must also advertise it in some local paper (*s*).

Carriage of the order.

Under the former practice, if more than one petition had been presented the carriage of the order was usually given to the first petitioner (*t*). As a general rule the priority of the petitions is determined by the date of presentation (*u*). Under the present practice the carriage of the order is not of the same importance. For, as will be seen hereafter, the conduct of the proceedings in a winding up is now largely in the hands of the Official Receiver and liquidator, and the liquidator is no longer the nominee of the petitioning creditor.

Settling the order.

No appointment is usually made for settling the order (*y*), but the petitioner and all persons who appeared at the hearing of the petition must leave the documents required for this purpose at the registrar's office not later than the day following that on which the order was made (*z*).

(*m*) 25 & 26 Vict. c. 89, §§ 111 and 143. As to the powers of the registrar of joint stock companies to strike a company which is being wound up off the register, see Companies Act, 1900, § 26. As to the jurisdiction of the Court over a company actually dissolved, see *infra*, sect. 16 of this chapter.

(*n*) Comp. Act, 1862, § 88.

(*o*) Rules, 1892, r. 22, and form 19A to Rules, 1890.

(*p*) Rules, 1890, r. 39. As to sealing all orders, &c., see Rules, 1892, r. 8.

(*q*) Rules, 1890, r. 40.

(*r*) Ib. r. 41 (1).

(*s*) Ib. r. 41 (2). For form of advertisement in local paper, see form 20.

(*t*) *Storforth Lane Colliery Co.*, 10 Ch. D. 487; *General Financial Bank*, 20 Ch. D. 276; *Dublin Grains Co.*, 17 L. R., Ir. 512.

(*u*) *Building Societies Trust, Ld.*, 44 Ch. D. 140, explaining *Trades Bank Co.*, W. N. 1877, 268; see, too, *Storforth Lane Colliery Co.*, 10 Ch. D. 487, and *ante*, p. 892.

(*y*) Rules, 1892, r. 24.

(*z*) Ib. r. 23.

Bk. IV. Chap 1. Sect. 7.

Proceedings under the order.

The first proceedings usually taken after a compulsory winding-up order has been made are the holding of the first meetings of creditors and contributories to consider the desirability of applying to the Court for the appointment of a liquidator and a committee of inspection (*a*), the preparation of the company's statement of affairs (*b*), and the consideration of the Official Receiver's reports (*c*). It is the duty of the Official Receiver to see that the requirements of the Companies (Winding-up) Act, 1890, in respect of these matters are duly carried out (*d*). As soon as practicable after a winding-up order has been made, it is the duty of the Court to settle the list of contributories, and to cause the assets of the company to be collected and applied in discharge of its liabilities (*e*). These duties, and many other of the duties of the Court under the Act of 1862, are now discharged by the liquidator as an officer of the Court and under its control (*f*), and will be considered hereafter (*g*).

Registrars and proceedings in chambers.

All proceedings in the winding up of companies in the High Court are attached to one or more of the registrars who act under the general or special directions of the judge (*h*), but any other registrar may act for the registrar to whom the proceedings have been attached (*i*). With the exception of certain matters which the Rules require to be heard before the judge in open Court (*k*), any matter may be heard and determined in chambers (*l*). Subject to the provisions of the Acts and Rules the judge may authorise the registrar to hear and determine any matter which under the Acts or Rules may

(*a*) Act, 1890, § 6, and *infra*, p. 956.

(*b*) Ib. § 7, and *infra*, p. 957.

(*c*) Ib. § 8, and *infra*, pp. 928 and 959.

(*d*) See as to the position and duties of the Official Receiver, *infra*, pp. 954 *et seq.*

(*e*) Comp. Act, 1862, § 98.

(*f*) See Act, 1890, §§ 12 and 13, and Rules, 1890, rr. 83 and 89.

(*g*) See as to liquidators, *infra*, pp 965 *et seq.*

(*h*) Rules, 1892, r. 2 (1).

(*i*) Ib. r. 2 (2).

(*k*) Ib. r. 3. The excepted matters are petitions; appeals from the Board of Trade and Official Receiver (acting as Official Receiver, *National Whole Meal Bread Co.* [1892], 2 Ch. 457) to the Court; applications by the Board of Trade under § 15 of the Act of 1890; applications for committal for contempt and such other matters as the judge may by special or general order direct. In Courts other than the High Court, see Rules, 1890, r. 5.

(*l*) Rules, 1892, r. 3 (3).

be determined in chambers (*m*). And the registrar has in all matters within the jurisdiction of the judge all the powers and duties of a master, registrar, chief clerk or taxing master (*n*). Any matter in chambers may be adjourned into Court, and any matter in Court adjourned into chambers (*o*). The judge, moreover, is empowered to do in chambers everything which the Court is authorised to do by the Companies Act, 1862 (*p*).

Applications, how made.

Applications in Court other than petitions are made by motion, of which not less than two clear days' notice must be given. Applications in chambers other than *ex parte* applications are made by summons (*q*).

File of proceedings.

A file of all proceedings in the winding up of a company, including proceedings in any action brought by or against the company which has been transferred to the judge who exercises jurisdiction in winding up, is kept, as of record, in the office of the registrar (*r*). The file is open to inspection by the directors or officers of the company and by the officers of the Board of Trade, and, on payment of a small fee, by every contributory (*s*) or creditor whose claim has been admitted (*t*). These persons are also entitled to take or be furnished with copies of or extracts from any of the documents on the file (*u*). But depositions (*x*), except those taken on a public examination under the Companies Winding-up Act, 1890, § 8, are not to be placed

Inspection of file.

(*m*) Ib. r. 4. Where proceedings are transferred, see Rules, August, 1892, r. 1.

(*n*) Rules, August, 1892, r. 2.

(*o*) Rules, 1892, r. 4.

(*p*) § 83.

(*q*) Rules, 1892, r. 5, and as to applications under § 10 of the Act of 1890, see Rules, 1890, rr. 78 and 79, and *infra*. As to the general title of proceedings, see Rules, 1892, r. 6. For form of summons, see form 58 to Rules of 1890. Orders, summonses, notices, &c., must be sealed, Rules, 1892, r. 8. As to preparation and issue of summons, see ib. r. 9, and of orders, see ib. r. 10. As to office copies, see r. 12.

(*r*) Rules, 1892, r. 11, and Rules, August, 1892, r. 3. In Courts other than High Courts, see Rules, 1892, r. 31.

(*s*) Including an alleged contributory, see Comp. Act, 1862, § 74.

(*t*) Rules, 1892, r. 32. The file of proceedings is to be sent to the Board of Trade or Official Receiver, if required by them in the exercise of their functions under the Act, r. 33.

(*u*) Ib. r. 32.

(*x*) As to the shorthand notes of evidence of witnesses, see Rules, 1890, r. 16, and forms 5, 6, 7, and 8.

on the file or to be open to inspection by any person other than the Official Receiver or liquidator, unless the Court so directs (*y*).

Attendance of parties.

With respect to the attendance of parties, every contributory on the list, and every creditor of the company whose proof has been admitted, is entitled, at his own expense, to attend the proceedings, and to have notice thereof (*z*). But no such person is entitled to attend until he has entered in a book kept by the registrar, the name and address of himself and of his solicitor (*a*). Where the attendance of the liquidator's solicitor is required, the liquidator need not attend in person unless his presence is necessary or the Court directs him to attend (*b*).

Service of notices.

All notices and other documents for the service of which no special mode is directed, may be sent by prepaid post letter to the last known address of the person to be served, and such service is to be considered as made at the time the letter ought to be delivered in the due course of delivery by the post-office, notwithstanding that it may be returned by the post-office (*c*). The Court has no jurisdiction to serve notices of orders or of other proceedings in a winding up upon persons residing out of the jurisdiction of the Court, if the notices are in substance the commencement of proceedings against the persons on whom they are served (*d*); but notices which are not of this character may be served abroad (*e*).

Wishes of creditors and contributories to be consulted.

In all matters relating to the winding up of companies, the Court may have regard to the wishes of the creditors or

(*y*) Rule, November, 1895. Formerly all depositions were on the file and open to inspection, see *Standard Gold Mining Co.* [1895], 2 Ch. 545.

(*z*) Rules, 1890, r. 173.

(*a*) Ib. r. 173A.

(*b*) Ib. r. 174.

(*c*) Rules, 1890, r. 21, and see §§ 62 & 63 of the Act of 1862. Service of a debtor summons by leaving it at the registered address of a member will not be good if it is not his true or last known address. See *Ex parte Chatteris*, 10 Ch. 227. As to the service of notices under the Stannaries Acts, see 32 & 33 Vict. c. 19, § 8.

(*d*) *Anglo-African Steamship Co.*, 32 Ch. D. 348. As to service on an agent in England under the articles of association or under an agreement, see *Copin* v. *Adamson*, 1 Ex. D. 17; *Montgomery* v. *Liebenthal* [1898], 1 Q. B. 487.

(*e*) *Nathan, Newman & Co.*, 35 Ch. D. 1; and *Baron Liebig's Cocoa Works, Limited*, W. N. 1888, p. 120.

contributories (*f*), and may direct meetings to be held in order to ascertain their wishes, and may appoint a person to act as chairman (*g*). This power may now be exercised by the liquidator subject to the control of the Court (*h*). For the rules applicable to such meetings, the reader is referred to the Rules themselves (*i*).

Formal defects.

No proceedings under the Acts are invalidated by any formal defect or by any irregularity, unless the Court is of opinion that substantial injustice has been caused, and cannot be remedied by any order of the Court (*k*).

Enlargement, &c., of time.

The Court may extend or abridge the time appointed by the Rules or orders, for doing any act or taking any proceedings (*l*).

Inspection of books, &c.

The right of creditors and contributories to inspect the books of a company being wound up, will be alluded to hereafter when noticing the duties of the liquidators (*infra*, p. 975.)

Exemption from stamp duties.

The exemption from stamp duties of certain documents relating to bankruptcies contained in the Bankruptcy Act, 1883 (§ 144), has been extended to companies which are wound up by order of the Court (*m*).

2. *Extraordinary powers of the Court.*

In order to enable the Court more effectually to exercise its winding-up jurisdiction, certain extraordinary powers are conferred upon it which it will be convenient here to notice (*n*). The Court which will be referred to in the following pages will,

(*f*) § 91. Including alleged contributories, see § 74.

(*g*) See, as to submitting proposals with reference to matters arising in the winding up, *Slatter's Executors*, 5 De G. & S. 34, and 1 De G. M. & G. 64. And as to misleading such meetings, *Septimus Parsonage & Co.* [1901], 2 Ch. 424, and *ante*, p. 860.

(*h*) Act, 1890, § 13, and Rules, 1890, r. 47. See, too, § 23 of the Act of 1890.

(*i*) Rules, 1890, rr. 47–57, and as to proxies, rr. 123–125. As to the counting of votes and the majority necessary to pass a resolution, Rules, 1892, r. 25.

(*k*) Rules, 1890, r. 177. Irregularities in advertisements of petitions have been held cured by this Rule, see *ante*, p. 884. If the affidavit in support of the petition is not made by the right person, this defect is not cured by this Rule, *Charterland Stores, &c., Co.* [1900], 2 Ch. 870.

(*l*) Ib. r. 176.

(*m*) Finance Act, 1895, 58 Vict. c. 16, § 16.

(*n*) These extraordinary powers are in addition to and not restrictive of the ordinary powers of the Court, § 119 of the Companies Act, 1862.

however, be only the High Court of Justice in England, the reader being referred to the Acts themselves for information as to other Courts (*o*).

Public Examination under § 8 of the Companies (Winding-up) Act, 1890.

The first of these extraordinary powers which calls for notice is the power to order promoters, directors, or other officers of the company to be publicly examined. This power was conferred upon the Court by § 8 of the Companies (Winding-up) Act, 1890, and can only be exercised by the Courts which have jurisdiction under that Act, and in the winding up of companies, situate in England or Wales, under a compulsory order made after the 31st December, 1890 (*p*).

Official Receiver's reports.

When a compulsory order has been made it is the duty of the Official Receiver to submit a preliminary report to the Court on certain matters relating to the company (*q*), and he may, if he thinks fit (*r*), make a further report or further reports stating the manner in which the company was formed, and whether, in his opinion, any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to it (*s*) since its formation, and any other matters which, in his opinion, it is desirable to bring to the notice of the Court (*t*).

Jurisdiction to order a public examination.

Upon the consideration of the Official Receiver's further report, or of any subsequent further report, for the Official Receiver may make as many further reports as he thinks fit, the jurisdiction of the Court to order a public examination arises; such an order cannot be made on the preliminary report (*u*). Any person who has taken any part in the

(*o*) Every Court in England or Wales having jurisdiction to wind up a company has the powers of the High Court. See Companies (Winding-up) Act, 1890, § 1 (6). It must, however, be remembered that this Act only relates to England and Wales.

(*p*) Act, 1890, §§ 8, 31, 32 and 34.

(*q*) Act, 1890, § 8 (1). See further as to these reports, *infra*, pp. 959 *et seq.*

(*r*) As to the meaning of this expression, see *Ex parte Barnes* [1896], A. C. pp. 150 and 154, and *infra*, p. 959, note (*s*).

(*s*) Frauds merely on the outside public are not within the scope of this section. See *Medical Battery Co.* [1894], 1 Ch. 444.

(*t*) Act, 1890, § 8 (2).

(*u*) Ib. § 8 (3), and *Ex parte Barnes* [1896], A. C. 146; *Ex parte Barnard* [1892], 3 Ch. 307; *General Phosphate Corp.* [1895], 1 Ch. 3.

promotion or formation of the company, or has been a director or officer of the company, is liable to be publicly examined (*x*). The provisions, however, of the Act which confer the power to direct a public examination are of a penal nature and directed against wrongdoers (*y*); and after a considerable conflict of judicial opinion, it has been decided that the Court has no jurisdiction to make an order for the public examination of any person unless the further report of the Official Receiver contains the following essential particulars, viz.: a finding that the person against whom the order is asked has taken part in the promotion or formation of the company, or has been a director or officer of the company (*z*); a statement that the Official Receiver is of opinion, or a statement of facts which clearly show his opinion to be (*a*), that fraud has been committed by some person in the promotion or formation of the company, or by some director or officer in relation to the company since its formation (*b*), and that the person against whom the order has been asked has been guilty of such fraud (*c*). Moreover, if the report states that the Official Receiver is of such opinion, the facts upon which his opinion is based must also be stated (*d*). These essential particulars must be contained in the report itself, they cannot be supplied by verbal statements (*e*).

Matters to be stated in report

If any facts come to the knowledge of the Official Receiver, whether from an examination under this section, or from a

Subsequent reports.

(*x*) Ib. § 8 (3). As to the persons included as "officers" of the company, see *infra*, p. 944.

(*y*) *Ex parte Barnes* [1896], A. C. p. 153; *Ex parte Barnard* [1892], 3 Ch. p. 329.

(*z*) *Ex parte Barnard* [1892], 3 Ch. 307; *Trust and Investment Corporation, &c.* [1892], 3 Ch. 332; *Civil, Naval and Military Outfitters* [1899], 1 Ch. 215; *National Stores, Ld.* [1899], 2 Ch. 773.

(*a*) If the report only suggests fraud this is not sufficient. See *General Phosphate Corporation* [1895], 1 Ch. 3, overruling on this point *Birkdale Steam Laundry, &c., Co.* [1893], 2 Q. B. 386, and *Laxon & Co.* [1893], 1 Ch. 210; and explaining *Trust and Investment Corporation, &c.* [1892], 3 Ch. 332.

(*b*) *Ex parte Barnard* [1892], 3 Ch. 307, and cases in next note.

(*c*) *Ex parte Barnes* [1896], A. C. 146, overruling on this point *Ex parte Barnard* [1892], 3 Ch. 307; *Trust and Investment Corporation, &c.* [1892], 3 Ch. 340, and *General Phosphate Corporation* [1895], 1 Ch. 3.

(*d*) *Civil, Naval and Military Outfitters, Ld.* [1899], 1 Ch. 215; *Trust and Investment Corporation, &c.* [1892], 3 Ch. p. 338.

(*e*) *Ex parte Barnard* [1892], 3 Ch. pp. 326, 331.

private examination under § 115 of the Companies Act, 1862, or from any other source, which are not contained in any previous report, and which, in his opinion, justify an order for a public examination, he must embody them in a supplemental or fresh further report, before the Court can act on them (*f*).

Order *ex parte*.

The consideration of the report takes place before the judge personally in chambers, and it is the duty of the Official Receiver to attend (*g*). On the consideration of the report an order for a public examination may be made *ex parte* (*h*).

Discharge of order.

Any person against whom such an order has been made may apply, either by motion or summons served on the Official Receiver, to discharge it on the ground that the Court had no jurisdiction to make the order; but if the report upon which the order was based was made in good faith and contained all the matters essential to give the Court jurisdiction, evidence will not be admitted to contradict the statements contained in the report, nor will the order be discharged on the ground that the Court in making it exercised its discretion unwisely (*i*). An application to discharge the order must be made within a reasonable time (*k*), and a delay of two months after notice of the order has been held to be unreasonable (*l*). If the order is discharged, the Official Receiver may be ordered to pay the costs of the application (*m*).

Attendance for examination.

When the Court makes an order for the public examination of any person (*n*), a day and place for holding the examination are appointed, and notice is sent by the Official Receiver to the person who is to be examined (*o*), and is given to the creditors and contributories of the company by advertise-

(*f*) *Ex parte Barnard* [1892], 3 Ch. pp. 330, 331; *Ex parte Barnes* [1896], A. C. pp. 156–157.

(*g*) Rules, 1890, r. 71, he may attend by counsel or solicitor.

(*h*) *Trust and Investment Corporation, &c.* [1892], 3 Ch. 342, and see form of order, Rules, 1890, form 37.

(*i*) *New Travellers' Chambers, Ld.* [1895], 1 Ch. 395, evidence to rebut charge of fraud excluded; *National Stores, Ld.* [1899], 2 Ch. 773, evidence to rebut finding that applicant had taken part in the formation of the company excluded.

(*k*) *Civil, Naval and Military Outfitters* [1899], 1 Ch. 237.

(*l*) *National Stores, Ld.* [1899], 2 Ch. 773, affirmed on this point [1900], 1 Ch. 27. *Semble*, in ordinary cases the application should be made within fourteen days.

(*m*) *Hounslow Brewery Co.*, W. N. 1896, p. 45.

(*n*) For form of order, see Rules, 1890, form 37.

(*o*) Rules, 1890, rr. 73 and 74, and forms 38 and 38A.

ment in a newspaper and the *London Gazette* (*p*). If the person who has been directed to attend for examination fails to attend, or if he has absconded or intends to abscond with the view of avoiding examination, the Court may issue a warrant for his arrest (*q*).

Persons before whom it may be held.

The examination may, if the Court so directs, and subject to general rules, be held before any judge of County Courts, or any officer of the Supreme Court being an official referee, master, registrar in bankruptcy, a chief clerk, or a district registrar of the High Court, named for the purpose by the Lord Chancellor, or in a Palatine Court before a registrar of that Court (*r*). Under the rules now in force, it is to be held before the judge, but in the High Court the judge may direct the whole or any part of it to be held before the registrar or any of the persons mentioned in the Act (*s*). When the examination is held before the registrar or any person other than the Judge, the person holding the examination may, if it is unduly protracted, or for any other sufficient cause, adjourn it, or any part of it, to be held before the Judge (*t*). In the High Court the examination is usually held before the registrar.

Adjournment.

The Court, or person before whom the examination is held, may adjourn it from time to time (*u*).

Persons entitled to take part in the examinations.

It is the duty of the Official Receiver to take part in the examination, and he may, if specially authorised by the Board of Trade, employ a solicitor and counsel (*x*). The liquidator, if the Official Receiver is not the liquidator, and any creditor or contributory may take part therein, either personally or by solicitor or counsel (*y*). The person to be examined may also at his own cost employ a solicitor or counsel, who may put to him such questions as the Court, or the person before whom the examination is held, may deem

(*p*) Rules, 1890, r. 75.

(*q*) Ib. r. 76. In the High Court the warrant is issued in the Central Office pursuant to an order of the Judge; Rules, 1892, r. 13. See, as to the execution of these warrants, Rules, 1899, and forms thereto which are embodied in Rules, 1890, as rr. 20A to 20F, and forms 41A and 41B.

(*r*) Act, 1890, § 8 (9).

(*s*) Rules, 1892, r. 26 (*a*).

(*t*) Rules, 1892, r. 26 (*c*).

(*u*) Act, 1890, § 8 (8) and (9).

(*x*) Ib. § 8 (4).

(*y*) Ib. § 8 (5). This would include an alleged contributory, see Companies Act, 1862, § 74.

just for the purpose of enabling him to explain or qualify his answers (z).

Subject and conduct of the examination.

The person examined is entitled to be furnished at his own cost with a copy of the Official Receiver's report (a). He may be examined generally as to the promotion or formation of the company, or as to the conduct of its business, or as to his conduct and dealings as a director or officer of the company (b), but the Judge may give directions as to the special matters on which he is to be examined (c). He is examined on oath, and must answer all such questions as the Court, or the person before whom the examination is held, may put, or allow to be put to him (d). If the examination is held before the Registrar, or any other officer of the Court who has no power to commit for contempt of Court, and he refuses to answer any question put to him to the satisfaction of the person before whom the examination is held, such person may report the refusal to the Judge, who may deal with the matter in the same way as if the default in answering had been before himself (e).

Notes of the examination admissible in evidence;

Notes of the examination must be taken, read over, and signed by the person examined, and may be used in evidence against him (f). Moreover, in proceedings under § 10 of the Companies (Winding-up) Act, 1890 (g), these notes are admissible in evidence, subject to all just exceptions against any person proceeded against, who had an opportunity of being present at the public examination, provided that due notice of the intention to use them against him has been given, and copies of the notes, other than of his own depositions, have been furnished him (h). Every one against

(z) Act, 1890, 8 (7) and (9).

(a) Ib. § 8 (7).

(b) Ib. § 8 (3).

(c) Rules, 1892, r. 26 (b).

(d) Act, 1890, § 8 (6) (7) and (9). The Court has a discretion, see *London and Globe Finance Corp., Ld.*, Times, 24 Jan. 1902, and *infra*, p. 937, note (i).

(e) Rules, 1890, r. 17. The report must be in writing, and before the conclusion of the examination the officer must name the time when and place where the default will be reported. It may be reported at once.

(f) Act, 1890, § 8 (7). As to the employment of a shorthand writer, see Rules, 1890, r. 16 and forms 5–8. If the notes are not signed, the evidence of the shorthand writer is admissible, even in a criminal trial, to prove an admission by the person examined, see *R.* v. *Erdheim* [1896], 2 Q. B. 260.

(g) See as to these proceedings, *infra*, pp. 940 *et seq.*

(h) Rules, 1892, r. 27. See the rule and *quære* how far it goes; it is not *ultra vires*. *London and General Bank*, W. N. 1894, p. 155.

whom such proceedings are taken is entitled to cross-examine or re-examine the person, the notes of whose examinations are read, as though such person had made an affidavit in the proceedings (*i*). The notes of the examination are open to the inspection of any creditor or contributory of the company at all reasonable times (*k*), and must be placed on the file of proceedings (*l*).

and open to inspection.

If the person examined is exculpated from any charges made, or suggested against him (*m*), the Court may allow him such costs as it thinks fit (*n*). The Court alone has power to give these costs (*o*); if, therefore, the examination is held before any person other than the Judge, or, in the High Court, the registrar (*p*), a separate application for the costs must be made (*q*).

Costs.

The power to order a public examination is, as has been already observed, of a penal nature, and cannot be exercised merely for the sake of obtaining information; when this is the object in view, the Court must proceed by private examination under the Companies Act, 1862, § 115. The provisions of the one Act are, however, ancillary to and the complement of the provisions of the other; thus, while the main object of the Official Receiver's preliminary report is to give the Court information to guide it in the exercise of its powers under the Companies Act, 1862, these powers may be exercised from time to time to obtain the information necessary to enable the Official Receiver to make a further report and to form an opinion whether fraud has been committed, and if so by whom, and thus to give the Court jurisdiction to order a public examination under the Companies (Winding-up) Act, 1890 (*r*).

Public and private examinations.

By the Companies Act, 1862, the Court is empowered,

Power to summon and

(*i*) Rules, 1892, r. 27.

(*k*) Act, 1890, § 8 (7).

(*l*) Rules, 1890, r. 77. As to the right to inspect the file of proceedings, see *ante*, p. 925.

(*m*) The Official Receiver in his report should state the nature of the charge as precisely as possible. See *per* Chitty, L. J., *Civil, Naval and Military Outfitters* [1899], 1 Ch. p. 234.

(*n*) Act, 1890, § 8 (7). If not exculpated he bears his own costs, see *Ex parte Barnes* [1896], A. C. p. 155.

(*o*) Ib. § 8 (7).

(*p*) See the powers of the registrar, Rules, 1892, r. 4.

(*q*) As to such applications see Rules, 1890, r. 26.

(*r*) *Ex parte Barnes* [1896], A. C. 146.

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examine, Companies Act, 1862, §§ 115, 117.

after making a winding-up order, to summon before it any officer of the company or any person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to it, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate or effects of the company; and the Court may require him to produce any books or documents in his power relating to the company (*s*), and may examine him upon oath concerning its affairs (*t*).

Upon the application of liquidator or contributory.

An order may be made under this section on the application of the liquidator, or of a contributory or alleged contributory; in the former case the order is made *ex parte*, and the liquidator is not required to make any affidavit; it is sufficient if he makes a written statement showing a case of suspicion (*u*); in the latter case, the contributory is generally required to file an affidavit in support of his application, and he must serve the liquidator with notice of it, but he need not serve the persons for whose examination the order is wanted (*x*). It would seem also that the Court can make an order under the section on its own motion (*y*).

Discretion of Court.

It is entirely in the discretion of the Court whether it will in any particular case exercise the powers conferred upon it. The Court of Appeal will not interfere with the Court of first instance in the exercise of this discretion, except in a very extreme case (*z*); but an appeal will be allowed, even by a person ordered to attend for examination, if the Court of first instance has decided on a wrong principle, or if it had no jurisdiction to order the appellant to attend (*a*).

Commissioners for taking evidence.

The judges of the County Courts sitting at places more than twenty miles from London, and the commissioners of

(*s*) § 115.

(*t*) § 117.

(*u*) *Gold Co.*, 12 Ch. D. 77; *Imperial Continental Water Corporation*, 33 Ch. D. 314.

(*x*) See cases in last note. The application is now by summons in Chambers.

(*y*) See *per* Vaughan Williams, J., in *Land Securities Co.*, W. N. 1894, p. 91.

(*z*) See cases in note (*u*), and *Heiron's case*, 15 Ch. D. 139, and *Joseph Hargreaves, Limited* [1900], 1 Ch. 347.

(*a*) *Whitworth's case*, 19 Ch. D. 118; *Heiron's case*, 15 Ch. D. 139. Compare the *dicta* of Jessel, M. R., and Baggallay, L. J., in *Gold Company*, 12 Ch. D. 77, which were, however, questioned in *North Australian Territory Co.*, 45 Ch. D. 87.

bankrupts, and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, are made commissioners for taking evidence under the Act, and examining any witnesses whom the Court may direct to be examined by them (*b*). Provision, moreover, is made for the examination of persons in Scotland (*c*).

Attendance for examination.

The proper mode of obtaining the attendance of a person for examination under §§ 115 and 117 is by summons, not by subpœna (*d*). A person is not bound to attend unless his expenses are tendered him (*e*).

Conduct of examination.

A witness who does not answer to the satisfaction of the judge acting in the winding up, or who refuses to produce documents which he ought to produce, is liable to commitment (*f*); and a person is not justified in refusing to be sworn on the ground that it is necessary for him to have counsel's assistance during his examination (*g*); but it has been decided that he is entitled to the assistance of a solicitor and counsel, and to be re-examined by them, and to have notes taken of his own examination (*h*). The examination is as a general rule entrusted to the liquidator, but if necessary, the Court may entrust either the whole, or some part of it, to a creditor or contributory; it will then as a rule point out the extent and limits of the examination (*i*). In the High Court it usually takes place before the registrar in Chambers (*k*).

(*b*) § 126.

(*c*) § 127.

(*d*) *English Joint-Stock Bank*, 3 Eq. 203; *Gold Company*, 12 Ch. D. 77; *Westmoreland, &c., Slate Co.*, W. N. 1892, p. 2. The existing rules contain no special form of summons under this section. For the general form see Rules, 1892, r. 36, and form 58; and for a form apparently for a summons under § 10 see Rules, 1890, form 42. Under the old practice see form 54 of the rules of 1862.

(*e*) See § 115, and *Mercer's case*, 5 De G. M. & G. 26, and 2 Sm. & G. 87.

(*f*) *Stone's case*, 3 De G. & S. 120; and see Rules, 1890, r. 17, as to reporting such refusal to the judge.

(*g*) *Ex parte Bunn*, 3 Jur. N. S. 1013.

(*h*) *Cambrian Mining Co.*, 20 Ch. D. 376; *Breech-Loading Armoury Co.*, 4 Eq. 453; *Merchants' Co.*, ib. Compare *Ex parte Bunn*, 3 Jur. N. S. 1013.

(*i*) *Whitworth's case*, 19 Ch. D. 118; *North Australian Territory Co.*, 45 Ch. D. p. 91.

(*k*) Rules, 1892, r. 3 (2). The examination has occasionally by consent been held in Court. Formerly the examination was held before special examiners. The witness had no right to object to the examiner except on good grounds. See

Persons entitled to be present.

Neither the public (*l*) nor creditors, who are entitled to attend proceedings at their own expense, whether under rule 173 of the Rules of 1890 (*m*), or under an order of Court (*n*), have any right to be present at an examination under this section, and the examiner, if requested to do so, is bound to exclude them; the Court, however, may in its discretion allow their attendance (*o*).

Depositions, when admissible in evidence.

Depositions (*p*) of an examination under this section may be used against the deponent (*q*) and his answers may be put to him in cross-examination (*r*). If he denies that he gave the answers alleged, the depositions may be put in evidence to contradict him, but unless they are put in he has no right to see them (*s*). They are not evidence against any one except the deponent (*t*), nor may one person be cross-examined as to the answers of another (*u*).

Nature of depositions.

The depositions are in the nature of private documents in the hands of the liquidator, and the company cannot be compelled to produce them under an order for discovery in litigation between the company and the deponent (*x*). Under the present practice they are not to be put on the file of proceedings or to be open to inspection by any person other than the Official Receiver or liquidator unless and until the Court so directs (*y*). The Court may give directions from time to time as to their

Custody and inspection.

Contract Corporation, 13 Eq. 27, and compare *Smith, Knight & Co.*, 8 Eq. 23; *Lisbon Steam Tram. Co.*, 2 Ch. D. 575.

(*l*) *Western of Canada Oils Co.*, 6 Ch. D. 109.

(*m*) *Grey's Brewery Co.*, 25 Ch. D. 400, a decision under the old rule 60 of the Rules, 1862.

(*n*) *Norwich Equitable Fire Insurance Co.*, 27 Ch. D. 515.

(*o*) *Grey's Brewery Co.*, 25 Ch. D. 400.

(*p*) As to employing a shorthand writer, see Rules, 1890, r. 16. Under the practice directions, all *vivâ voce* evidence before the registrar must be taken down in shorthand.

(*q*) *Pugh and Sharman's case*, 13 Eq. 56. *Semble*, notice of intention to use them must be given. See, too, *R.* v. *Coote*, L. R. 4 P. C. 599.

(*r*) *North Australian Territory Co.* v. *Goldsborough, Mort & Co.* [1893], 2 Ch. 381.

(*s*) Ib. If put in evidence, the whole document must be put in.

(*t*) *Norwich Equitable Insurance Co.*, 27 Ch. D. 515; *Grey's Brewery Co.*, 25 Ch. D. 400. Compare as to public examinations, *ante*, p. 932.

(*u*) See [1893] 2 Ch. pp. 385-386.

(*x*) See [1893] 2 Ch. p. 387, and *Learoyd* v. *Halifax Banking Co.* [1893], 1 Ch. 686, a decision under the Bankruptcy Act.

(*y*) Rule, November, 1895. See before this rule, *Standard Gold Mining Co.* [1895], 2 Ch. 545.

custody and inspection, and if the company in proceedings against the deponent seeks to interrogate him the Court will, in a proper case, allow him to inspect and take a copy of his depositions on an undertaking by him not to allow their contents to be communicated to other persons (*z*).

Persons liable to be examined.

Under this section it has been held that bankers (*a*), brokers (*b*), relatives (*c*), and other persons (*d*), acquainted with the affairs of defaulting contributories, or of persons sought to be put on the list of contributories, may be examined concerning such contributories or persons, and transfers of shares by or to them. Moreover, a person is liable to examination under § 115, although there may be a pending litigation between him and the company, and his examination may relate to the subject-matter of such litigation (*e*). But it seems that a mere creditor of a company is not as such liable to examination under this section (*f*), although he can of course be cross-examined on his own claim. It is, perhaps, doubtful whether a promoter as such is within the section (*g*).

Purpose for which examination may be ordered.

This power of summoning persons for examination is conferred upon the Court for the purposes of the winding up, and for the benefit of all the persons interested in it; and the Court will not allow the power to be used in a vexatious manner or for an improper object (*h*), as for instance to obtain discovery for use in proceedings in which an order for discovery has been already refused (*i*). It may, however, be

(*z*) Ib. and *Merchants' Fire Office* [1899], 1 Ch. 433.

(*a*) *Druitt's case*, 14 Eq. 6; *Smith, Knight & Co.*, 4 Ch. 421.

(*b*) *Clement's case*, 13 Eq. 179 note.

(*c*) *Swan's case*, 10 Eq. 675; *Fricker's case*, 13 Eq. 178.

(*d*) *Trower and Lawson's case*, 14 Eq. 8; *Bloxam's case*, 36 L. J. Ch. 687; *Massey* v. *Allen*, 9 Ch. D. 164.

(*e*) *North Australian Territory Co.* v. *Goldsborough, Mort & Co.* [1893], 2 Ch. 38; *Archer's case*, W. N. [1901], pp. 236 and 247; *Lisbon Steam Tramways Co.*, 2 Ch. D. 575; and see *English Joint-Stock Bank*, 3 Eq. 203; *Re Cathcart*, 5 Ch. 703; *Venables* v. *Schweitzer*, 16 Eq. 76. Compare cases in notes (*h*), (*i*), *infra*.

(*f*) *Accidental and Marine Ins. Corp.*, 5 Eq. 22.

(*g*) *Ex parte Barnard* [1892], 3 Ch. p. 325.

(*h*) *Heiron's case*, 15 Ch. D. 139; *Imperial Continental Water Corporation*, 33 Ch. D. 314.

(*i*) *North Australian Territory Co.*, 45 Ch. D. 87. Compare *Archer's case* W. N. [1901], pp. 236 and 247, where the person under examination was an officer of the company; and see in a public examination, *ante*, p. 932, note (*d*), and in bankruptcy, *Ex parte Gittins* [1892], 1 Q. B. 646.

exercised for the purpose of tracing monies or documents of the company, and investigating any of its transactions (*k*). Monies due to a company are part of its estate and effects within the meaning of § 115 (*l*); and a person's ability to pay what he owes may be inquired into (*m*).

Compelling production of documents.

The power of compelling the production of documents only extends to such documents as may be required to be produced consistently with established rules (*n*). But the solicitors of a company being wound up are compellable to produce the accounts, deeds, and documents of the company in their possession, but without prejudice to any lien they may have against the company for their costs (*o*).

Examination of liquidators.

Liquidators may be examined by contributories, or alleged contributories, or by creditors, and be compelled to produce the company's books for inspection (*p*).

Power to arrest.

In order to prevent persons liable to contribute to the payment of the debts of the company from escaping from justice and avoiding examination, the Court may, either before or after making a winding-up order, cause any contributory or alleged contributory (*q*) to be arrested, and his books, money, and effects to be seized, if proof is given that there is probable cause for believing that he is about to abscond, or to remove or conceal any of his goods or chattels for the purpose of evading the payment of calls, or examination (*r*).

(*k*) See *Archer's case*, W. N. [1901], pp. 236 and 247; *Smith, Knight & Co.*, 4 Ch. 421; *Contract Corp.*, 6 Ch. 145.

(*l*) See *Clement's case*, 13 Eq. 179 note, and *Devon and Somerset Rail. Co.*, 6 Eq. 610.

(*m*) See *Bloxam's case*, *ante*, note (*d*), and others of that sort.

(*n*) See *Joseph Hargreaves, Ld.* [1900], 1 Ch. 347, where the Court declined to order the Surveyor of Income Tax to produce the company's returns.

(*o*) *Capital Fire Insurance Association*, 24 Ch. D. 408; *Ex parte Paine and Layton*, 4 Ch. 215; *Cameron's Coalbrook Rail. Co.*, 25 Beav. 1; *Potter's case*, 1 De G. & S. 728, *contra*, was under the older Acts.

(*p*) *Mutual Society*, 22 Ch. D. 714; *Barned's Banking Co.*, 2 Ch. 350; *Gooch's case*, 7 Ch. 207. See *Gooch's case* as to the affidavit the liquidator must make. See, also, *Emma Silver Mining Co.*, 10 Ch. 194. As to the right of plaintiffs in an action to compel the liquidator of a company, which has been wound up and dissolved, to produce the books of such company, see *London and Yorkshire Bank* v. *Cooper*, 15 Q. B. D. 473.

(*q*) § 74. As to the execution of warrants for arrest, see Rules, 1899, which are embodied in Rules, 1890, as rr. 20A to 20F and forms 41A and 41B.

(*r*) § 118, and in cases of failing to attend or absconding to escape from an examination, Rules, 1890, rr. 20

Summary order. to hand over money, &c., §§ 100, *et seq.*

In order to facilitate the collection of the company's assets, the Court may order any contributory settled on the list, and any trustee, receiver, banker, or agent, or officer of the company, to hand over any books, monies, or effects in his hands, and to which the company may be *primâ facie* entitled (*s*). This power may now be exercised by the liquidator by service of notice on the person in whose hands such books, &c., are (*t*). The Court may also order any contributory settled on the list to pay any monies due from him or from the estate of the person he represents to the company, exclusively of any calls made in the winding up (*u*). If the company is limited, payment under this section must be made irrespectively of any set-off; but if the company is unlimited, set-off may be allowed in respect of monies due from the company otherwise than on account of dividends or profits (*x*). The payment of calls is also enforced by a summary order (*y*).

All monies ordered to be paid under these sections are to be paid into the Bank of England, unless specially directed to be paid to the liquidator (*z*).

When these powers may be exercised.

These summary powers of obtaining money belonging to the company were introduced in the Winding-up Act of 1848 (*a*); and it was at one time held that these powers ought not to be exercised where there was a serious question as to the right of the company to what was withheld from it (*b*); but recent

et seq., and forms 41, 41A, 41B. See *Ulster Land Co., Limited*, 17 L. R. Ir. 591; *Imperial Mercantile Credit Co.*, 5 Eq. 264, which shows that an order to seize property may be made, though the Court will not on the evidence order an arrest.

(*s*) § 100, and see § 165 *infra*, pp. 940 *et seq.* As to the right to the custody of the company's books as between a liquidator and a receiver for debenture-holders, see *ante*, p. 343. Under the old practice an order would not be made *ex parte*, *Commercial, &c., Wine Co.*, 35 Beav. 35. In *British Imperial Corporation*, 5 Ch. D. 749, leave was given to serve a summons for this purpose out of the jurisdiction. *Sed quære*, see *ante*, p. 926, and *Re Wendt*, 22 Q. B. D. 733, but in bankruptcy see now Bankruptcy Rules, 1890, r. 17.

(*t*) See Act, 1890, § 13, and Rules, 1890, r. 91, and form of notice, form 53, and *infra*, p. 981.

(*u*) § 101, and see § 165 *infra*, pp. 940 *et seq.*

(*x*) § 101. As to set-off, see *infra*, pp. 1025 *et seq.*

(*y*) §§ 102 and 103. See, as to bankrupt shareholders, *Mitchell's case*, 5 Ch. 400.

(*z*) §§ 103 and 104. See, as to enforcing payment into the bank, *Leeds Banking Co.*, 1 Ch. 150.

(*a*) 11 & 12 Vict. c. 45, §§ 66 and 67. See *Ex parte Chadwick*, 15 Jur. 597.

(*b*) See *Royal Hotel Co. of Great*

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decisions show that the Court will exercise these summary powers wherever it can do so without injustice (c).

Not exercisable over strangers.

The summary powers conferred by § 100 cannot be exercised against a person who is not a contributory, trustee, receiver, banker, agent or officer of the company (d). Therefore no order can be made under these sections on the trustee of a bankrupt solicitor to a company (e); nor on the executors of a deceased contributory or director (f); nor on a fully paid-up shareholder who objects to be on the list of contributories (g); nor on a creditor who has obtained payment after the commencement of the winding up (h); nor on a banker of the company who cannot be proved to have in his hands money of the company (i).

Where a company had borrowed money beyond its powers, and had deposited deeds as a security for it, the Court refused to order the deeds to be given up, although the debt was not enforceable against the company (k).

Powers under Comp. Act, 1862, § 165, and Companies (Winding-up) Act, 1890, § 10.

The Court is expressly empowered (l) to examine into the conduct of any person who has taken part in the formation or

Yarmouth, 4 Eq. 244; *Bank of Gibraltar and Malta*, 1 Ch. 69, and *Carpenter's and Weiss's case*, 5 De G. & S. 402; *Ex parte Johnson*, 1 Jur. N. S. 913; *Ex parte Chadwick*, 15 Jur. 597.

(c) *Pearson's case*, 5 Ch. D. 336, and 4 ib. 222; *McKay's case*, 2 Ch. D. 1; *Stringer's case*, 4 Ch. 475; *Rance's case*, 6 ib. 104. See, also, under the Acts of 1856–8, *Cardiff Coal Co.* v. *Norton*, 2 Eq. 558, affirmed 2 Ch. 405.

(d) *Ex parte Hawkins*, 3 Ch. 787.

(e) *Hollinsworth's case*, 3 De G. & S. 102. See, also, *Cox's case*, ib. 180; and *Northfield Iron and Steel Co.*, W. N. 1866, p. 253, where the Court refused to order a railway company to deliver up goods on which it claimed a lien.

(f) *British Guardian Life Assurance Co.*, 14 Ch. D. 335; and *Feltom's Executors' case*, 1 Eq. 219, decided on § 165.

(g) *Marlbro' Club Co.*, 5 Eq. 365.

(h) *Ex parte Hawkins*, 3 Ch. 787.

(i) *Re National Bank*, 10 Eq. 298, where the Court held that it could not either under § 100, or under § 165, compel the bankers of a company being wound up to refund money improperly paid to the bank, but not proved to be the money of the company in question.

(k) *Wilson's case*, 12 Eq. 516. This case did not, however, turn on any particular section of the Act.

(l) Companies (Winding-up) Act, 1890, § 10. This Act has repealed § 165 of the Companies Act, 1862, as to England and Wales, and has replaced it by § 10. The last-mentioned section differs from the former in that (1) it enables the Official Receiver to apply to the Court; (2) it expressly extends to promoters; (3) it omits the words "in his own hands" after the word "retained"; (4) the property as well

promotion of the company, or any past or present director (*m*), manager, liquidator, or other officer if it appears that he has misapplied, or retained, or become liable or accountable for, any monies or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company; and the Court is empowered to compel him to repay such monies or restore such property with interest, or to make such compensation to the company as the Court may deem just (*n*). This section applies where a company is being wound up voluntarily (*o*).

Upon the application of liquidator, creditor, contributory, or official receiver.

The application may be made by the liquidator (*p*) or any creditor (*q*), or any contributory of the company (*r*), or in England and Wales by the Official Receiver (*s*). It does not seem necessary, in order to entitle the liquidator to a summons under this section, that the claim he seeks to assert should be one which the company itself might have asserted were it not being wound up; but if any objection be taken on this ground, the Court will order the summons to be amended by joining a creditor with the liquidator (*t*).

as the monies of the company are mentioned; (5) it omits the reference to criminal responsibility which is contained in § 165; and (6) its provisions are expressly made applicable to the winding up of any company, whether such winding up be compulsory, voluntary, or under supervision, and whether commenced before or after the Act came into operation. In other respects, the provisions of the two sections are identical, and the authorities under one are applicable to the other.

(*m*) A director *de facto* is within the section, *Coventry and Dixon's case*, 14 Ch. D. 660.

(*n*) See generally upon the section, *Rance's case*, 6 Ch. 104; *Stringer's case*, 4 Ch. 475; *McKay's case*, 2 Ch. D. 1; *Madrid Bank* v. *Bayley*, L. R. 2 Q. B. 37.

(*o*) *Rance's case*, 6 Ch. 104, and § 10 (2) of the Act, 1890.

(*p*) As to the liquidator's affidavit, see *Mutual Society*, 22 Ch. D. 714; he will not, except under special circumstances, be ordered to make an affidavit of documents, ib.

(*q*) Including a policy-holder, *British Guardian Life Assurance Co.*, 14 Ch. D. 335.

(*r*) A bankrupt contributory has no right to make the application, *Cape Breton Co.*, 19 Ch. D. 77. And a contributory who is the holder of fully paid-up shares must show that there is some probability, if his application is successful, of there being assets to be divided amongst the shareholders, *Cavendish Bentinck* v. *Fenn*, 12 App. Ca. 652.

(*s*) The Official Receiver should not allow his name to be used under an indemnity as to costs except in a clear case, see Practice Note, W. N. 1894, p. 166, and *Anglo-Sardinian, &c., Co.*, ib. p. 156, and see as to his position generally, *New Zealand, &c., Co.*, ib. p. 200.

(*t*) *National Funds Ass. Co.*, 10 Ch. D. 118; but see *Coventry and*

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Cases to which the section applies.

The section does not create any new liability, but only provides a summary mode of enforcing rights, which must otherwise have been enforced under the ordinary procedure of the Court (*u*); and proceedings can only be taken under the section when there has been some breach of duty towards the company (*x*), or culpable negligence in the discharge of such duty (*y*), which has resulted in a loss, or a liability to contribute, whether by way of damages or otherwise, to the company's funds (*z*). Proceedings cannot be taken by a contributory under this section to recover damages from a liquidator for a breach of duty to the individual contributory (*a*).

Instances of orders under the section.

Under the clause in question a director has been compelled to refund dividends and bonuses improperly declared and received by him (*b*), or improperly paid out of capital (*c*), or out of monies borrowed for the purpose (*e*); to refund sums improperly

Dixon's case, 14 Ch. D. 660. In *British Guardian Life Assurance Co.*, ib. 335, the summons was taken out in the first instance by the liquidator and a creditor.

(*u*) *Cavendish Bentinck* v. *Fenn*, 12 App. Ca. 652; *Flitcroft's case*, 21 Ch. D. 519; *Coventry and Dixon's case*, 14 Ch. D. 660, and the concluding remarks in *Forest of Dean Coal Mining Co.*, 10 Ch. D. 450.

(*x*) See words "in relation to the company" and *Ambrose Lake Tin Mining Co.*, 10 Ch. D. 390; *British Seamless Paper Box Co.*, 17 Ch. D. 467.

(*y*) *Kingston Cotton Mill Co.* (No. 2) [1896], 1 Ch. 331; and ib. 2 Ch. 279, *New Mashonaland Exploration Co.* [1892], 3 Ch. 577; *Davies' case*, 45 Ch. D. 537. Compare *Marquis of Bute's case* [1892], 2 Ch. 100. As to the degree of negligence necessary to impose liability, see *ante*, pp. 521 *et seq.*

(*z*) *Archer's case* [1892], 1 Ch. 322, explaining *Cavendish Bentinck* v. *Fenn*, 12 App. Ca. 652; *Coventry and Dixon's case*, 14 Ch. D. 660, where it was decided that for a director to act without holding the necessary share qualification is not a misfeasance under this section, but see now Comp. Act, 1900, § 3 (3). See, too, *Wragg, Limited* [1897], 1 Ch. 796.

(*a*) *Hill's Waterfall, &c., Mining Co.* [1896], 1 Ch. 947.

(*b*) *Rance's case*, 6 Ch. 104.

(*c*) *London and General Bank* (No. 2) [1895], 2 Ch. 673; *Kingston Cotton Mill Co.* (No. 2) [1896], 1 Ch. 331, reversed as to the auditor [1896], 2 Ch. 279; *Oxford Benefit Building Soc.*, 35 Ch. D. 502; *Denham & Co.*, 25 Ch. D. 752; *Flitcroft's case*, 21 Ch. D. 519; *Alexandra Palace Co.*, ib. 149; *National Funds Assurance Co.*, 10 Ch. D. 118. The directors may be ordered to pay interest at 5 per cent. from the date of the improper payments, and they may not deduct income tax from such interest, see *National Bank of Wales* [1899], 2 Ch. pp. 650-651, and *ante*, pp. 603 to 605.

(*e*) *Alexandra Palace Co.*, 21 Ch. D. 149. Compare *Stringer's case*, 4 Ch. 475.

paid out of the company's monies to a promoter for preliminary expenses (*f*), to a stockbroker for placing the company's shares (*g*), or to himself for remuneration for his services, or for commissions on purchases and sales (*h*), or as presents (*i*); to make good losses occasioned by the non-investment of funds which ought by the company's regulations to have been invested (*k*); to pay calls made on shares improperly procured by him to be allotted to his infant children (*l*); to pay the full value of paid-up shares given him as a qualification or as a bribe (*m*); or if he paid anything for them, to pay the difference between the price which he did pay and their full value (*n*); to pay the par value of worthless shares sold by him at par to a promoter under a secret agreement for indemnity with interest from the date of the summons (*o*); and to account for other secret profits improperly made (*p*). A secretary has been ordered to pay the full value of paid-up shares given to him by a vendor of property to the company (*q*). Promoters have been made to account for secret profits (*r*). Auditors have been made to pay as damages the amount of dividends improperly declared and paid on the basis of false accounts and balance-sheets passed by them (*s*); and a trustee or manager of a Trustee Savings Bank has been made liable for loss occasioned

(*f*) *Englefield Colliery Co.*, 8 Ch. D. 388; *Ex parte Pelly*, 21 Ch. D. 492.

(*g*) *Faure Electric Accumulator Co.*, 40 Ch. D. 141. See as to the legality of such payments, *ante*, p. 43. This case also decided that in the absence of dishonesty a director could not be made liable under this section for sanctioning a transfer to a person who subsequently turned out to be insolvent.

(*h*) *Oxford Benefit Building Soc.*, 35 Ch. D. 502.

(*i*) *Geo. Newman & Co.* [1895], 1 Ch. 674.

(*k*) *British Guardian Life Assurance Co.*, 14 Ch. D. 335.

(*l*) *Ex parte Wilson*, 8 Ch. 45.

(*m*) *Postage Stamp, &c., Delivery Co.* [1892], 3 Ch. 566; *Carriage Co-operative Supply Assoc.*, 27 Ch. D. 322; *Mitcalfe's case*, 13 Ch. D. 169; *Pearson's case*, 5 Ch. D. 336, and 4 ib. 222.

(*n*) *Weston's case*, 10 Ch. D. 579.

(*o*) *Archer's case* [1892], 1 Ch. 322.

(*p*) *Bland's case* [1893], 2 Ch. 612; *Gluckstein* v. *Barnes* [1900], A. C. 240.

(*q*) *McKay's case*, 2 Ch. D. 1; *De Ruvigné's case*, 5 Ch. D. 306.

(*r*) *Gluckstein* v. *Barnes* [1900], A. C. 240. The promoters were also directors.

(*s*) *London and General Bank* (No. 2) [1895], 2 Ch. 673. As to their liability, see *ante*, p. 618.

by his neglect to comply with the rules of the bank imposed by § 11 of the Trustee Savings Bank Act, 1863 (*t*).

Persons not within the section.

The section, however, has been held not to apply where it is sought to charge the estate of a deceased director (*u*); neither is a banker (*x*), nor a solicitor (*y*), as such within it, though a solicitor may be if he is called an officer of the company, and is paid by a salary (*z*). An auditor of a banking company, appointed in pursuance of § 7 of the Companies Act, 1879 (*a*), or of a company governed by articles containing similar provisions, is within the section (*b*), but a person who merely performs the duties of auditor is not necessarily an officer of the company (*c*).

The section applies in the winding up of a registered industrial and provident society (*d*), and an incorporated building society (*dd*).

Order for payment, how enforced.

The Court cannot commit a director to prison for non-payment of money which he has been ordered to pay under this section unless the case can be brought within § 4 of the Debtors Act, 1869 (32 & 33 Vict. c. 62) (*e*), but an order for payment of money under the section is now a final judgment within the meaning of paragraph (g) of sub-section 1 of § 4 of the Bankruptcy Act, 1883 (*f*).

Monies recovered are included in a general charge.

Monies recovered under this section are covered by a general floating charge on all the company's undertaking, and will therefore belong to the debenture-holders if their debentures contain such a charge (*g*). And the Court has even directed

(*t*) *Davies' case*, 45 Ch. D. 537. Compare *Marquis of Bute's case* [1892], 2 Ch. 100, a case relating to the nominal president of the same bank.

(*u*) *Feltom's Executors' case*, 1 Eq. 219; *British Guardian Life Assurance Co.*, 14 Ch. D. 335.

(*x*) *Re National Bank*, 10 Eq. 298; *ante*, p. 940, note (*i*).

(*y*) *Carter's case*, 31 Ch. D. 496.

(*z*) *Liberator Building Society*, 10 Times L. R. 537.

(*a*) *London and General Bank* [1895], 2 Ch. 166.

(*b*) *Kingston Cotton Mill Co.* [1896], 1 Ch. 6. The provisions of the Companies Act, 1900, are very similar to those in the Companies Act, 1879, see *ante*, p. 622.

(*c*) *Western Counties, &c., Milling Co.* [1897], 1 Ch. 617.

(*d*) *Ferndale Industrial Society* [1894], 1 Q. B. 828, and 56 & 57 Vict. c. 39, §§ 58 and 59.

(*dd*) 57 & 58 Vict. c. 47, § 8.

(*e*) *Mitcalfe's case*, 13 Ch. D. 815.

(*f*) Companies (Winding-up) Act, 1893. The bankruptcy petition should be presented by the liquidator in the name of the company, *Re Barrett*, 39 Sol. J. 399.

(*g*) *Anglo-Austrian Printing Union* [1895], 2 Ch. 891. As to the costs payable out of the assets recovered, see *infra*, p. 945.

claims under this section to be put up for sale by auction in a debenture holder's action (*h*). Such claims are choses in action, and may be sold under § 95 of the Companies Act, 1862, and will pass without special mention on a general sale of the company's assets (*i*).

Sale of claims.

A director cannot set-off a debt due to him from the company against a claim made by the liquidator under this section (*k*).

Set-off.

An application in the High Court under § 10 of the Act of 1890 should be made by summons (*l*), and the summons should state the grounds on which it is suggested that the matters complained of constitute a wrongful act or misfeasance (*m*), and should be confined to proceedings under the section (*n*). If the application is made by the Official Receiver or the liquidator, he may make a report to the Court stating any facts or information on which he proceeds which are verified by affidavit or derived from sworn evidence in the matter. When the application is made by any other person, it must be supported by affidavit (*o*).

Procedure.

Evidence in support.

The Official Receiver or liquidator will not, as a rule, be ordered to give security for costs (*p*), for if he fails he may be ordered to pay the costs personally (*q*).

Security for costs.

If the assets recovered belong to the debenture holders, the costs incurred by the liquidator in the proceedings to recover them will be payable thereout, although the debenture holders' security is insufficient; but such assets will not be subject to the general costs of the winding up (*r*).

Costs.

The Court may also order any past or present director, manager, officer, or member of a company ordered to be wound

Power to order prosecution.

(*h*) *Wood* v. *Woodhouse and Rawson United*, W. N. 1896, p. 4.

(*i*) *Park Gate Waggon Works Co.*, 17 Ch. D. 234.

(*k*) *Carriage Co-operative Supply Assoc.*, 27 Ch. D. 322; *Ex parte Pelly*, 21 Ch. D. 492; *Pearse's case*, ib. 498, *n.*; *Flitcroft's case*, ib. 519; and see *Ex parte Theys*, 25 Ch. D. 587.

(*l*) Rules, 1890, r. 78.

(*m*) *New Mashonaland Exploration Co.* [1892], 3 Ch. 577.

(*n*) See *Wragg, Ld.* [1897], 1 Ch. 801.

(*o*) Rules, 1890, r. 78. As to depositions on public examination, see *ante*, p. 932, or private examination, *ante*, p. 936.

(*p*) *W. Powell & Sons* [1896], 1 Ch. 681.

(*q*) Ib. and *Western Counties Steam, &c., Co.* [1897], 1 Ch. 617.

(*r*) *Anglo-Austrian, &c., Union* [1895], 2 Ch. 891. See generally as to the costs allowed, ib. [1894], 2 Ch. 622; and as to the costs of the brief, R. S. C. App. N. 82A.

up by the Court, or subject to its supervision, or being wound up voluntarily, to be criminally prosecuted, at the expense of the company, if it shall appear that he has been guilty of any offence in relation to the company for which he is criminally responsible (*s*).

Companies (Winding-up) Act, 1890, § 15.

Lastly, special powers are conferred by the Companies (Winding-up) Act, 1890, upon the Courts in England and Wales, and upon the Board of Trade to enable them to ascertain and get in unclaimed and undistributed assets in the hands of liquidators. These powers are conferred by § 15 of that Act. The section applies to the winding up of every company in England and Wales, whether the winding up is compulsory, voluntary, or under supervision, and whether it commenced before or after the Act came into operation (*t*).

Unclaimed and undistributed assets.

If the winding up of the company is not concluded within a year of its commencement (*u*), it is the duty of the liquidator (*x*) to send to the registrar of joint stock companies twice a year (*y*) statements (*z*), verified by affidavit (*a*), of his receipts and payments during the period covered by the statement (*b*). If it appears from any such statement or otherwise that the liquidator has in his hands or under his control (*c*) any money representing unclaimed or undistributed (*d*) assets which have remained unclaimed or undistributed for six months after the date of their receipt, it is the duty of the liquidator forthwith (*e*)

(*s*) Comp. Act, 1862, §§ 167 and 168.

(*t*) Act of 1890, § 15 (6) and *Stock and Share, &c., Co.* [1894], 1 Ch. 736.

(*u*) As to when a winding up is deemed to be concluded for the purposes of this section, see Rules, 1890, r. 126.

(*x*) If he makes default he is liable to a penalty of 50*l.* for each day the default continues; Act. 1890, § 15 (2).

(*y*) Rules, 1890, r. 127. As to the date from which the statements are to commence, see r. 127B, and to which they are to be brought down, r. 127.

(*z*) For form of statement, see Rules, 1890, form 75.

(*a*) Rules, 1890, r. 127A, and form 75A.

(*b*) If there have been no such receipts or payments, the liquidator must make an affidavit to that effect. Rules, 1890, r. 127C.

(*c*) As to money to the credit of an official liquidator at the Bank of England, see Rules, 1890, r. 132.

(*d*) As to what are undistributed assets within the meaning of this section, see *Land Mortgage Bank of Florida* [1898], 1 Ch. 444.

(*e*) Act, 1890, § 15 (3). If these monies represent unclaimed dividends, the six months is calculated from the date when the dividend became payable, Rules, 1890, r.

to pay them into the Companies Liquidation Account at the Bank of England (*f*).

Powers under Bankruptcy Act 1883, § 162.

For the purpose of ascertaining and getting in any monies payable into the Bank of England under this section, powers similar to those exercisable under § 162 of the Bankruptcy Act, 1883, may be exercised, and by the same authority (*g*).

Section 162 empowers the Board of Trade, with the concurrence of the Treasury, to appoint some person to collect and get in the unclaimed or undistributed funds and dividends which, under the provisions of the section, it is the duty of the trustee to pay into the Bankruptcy Estates Account at the Bank of England, and authorises the Court, for the purposes of the section, at the instance of the person so appointed, or of the Board of Trade, to exercise all the powers conferred by the Act with respect to the discovery and realisation of the property of the debtor, and the provisions of Part I. of the Act, with any necessary modifications, are made applicable (*h*). The other provisions of the section with the necessary modifications have been substantially incorporated in the Companies Winding-up Act, 1890, and the Rules thereunder (*i*).

The powers with respect to the discovery and realisation of the property of the debtor are contained in § 27 of the Bankruptcy Act, 1883. This section is analogous to § 115 of the Companies Act, 1862.

Disobedience to order of Board of Trade.

The Bankruptcy Act, 1883, authorises the Court to order any person who disobeys any order or direction of the Board of Trade, or of the Official Receiver or other officer of the Board of Trade, to comply therewith, and also, if it thinks fit, to make an immediate order for the committal of the person in default (*k*).

127D (1). In other cases the money must be paid in within 14 days from the date to which the statement is brought down ; r. 127D (2). As to how the amount to be paid in is to be calculated, see ib.

(*f*) As to mode of paying in, see Rules, 1890, r. 131.

(*g*) Act, 1890, § 15 (4).

(*h*) Bank. Act, 1883, § 162, 2 (*c*). Compare Rules, 1890, r. 129 (2).

(*i*) Bank. Act, 1883, § 162 (1) and (2)(*a*) are, with the necessary modifications, substantially reproduced by Act, 1890, § 15 (3). Bank. Act, 1883, § 162 (2) (b) authorises the Board of Trade to call on a trustee to submit an account and to audit it ; this is provided for by Rules, 1890, r. 129 (1). Bank. Act, 1883, § 162 (4), is the equivalent of Act, 1890, § 15 (5), and Bank. Act, 1883, § 162 (5) of the first part of Act, 1890, § 11 (1).

(*k*) Bank. Act, 1883, § 102 (5).

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It is apprehended that the Court has a similar power in proceedings under § 15 of the Companies Winding-up Act, 1890.

Particulars of unclaimed assets.

The Board of Trade may also call on every person who has acted as liquidator of a company, whether the liquidation is concluded or not, to furnish particulars of any unclaimed or undistributed assets in his hands, or other particulars necessary for ascertaining and getting in any monies payable into the Companies Liquidation Account at the Bank of England (*l*), and order him to submit an account of his receipts and payments, and enforce an audit of his account (*m*).

Applications under § 15 of Companies (Winding-up) Act, 1890.

Applications by the Board of Trade for the purpose of ascertaining and getting in monies payable into the Bank of England under § 15 of the Companies (Winding-up) Act, 1890, in a winding up in the High Court, to which the Rules of 1892 apply, are made to the judge by motion, and heard in open Court (*n*).

Enforcement of the requirements of the section.

If the liquidator makes default in complying with the requirements of the section, either by not sending in proper statements, or not paying money into the Bank of England in accordance with its provisions, the Court will, on an application by the Board of Trade, order him to comply therewith, and will, in a proper case, if he fails to obey such order, grant leave to issue a writ for his attachment, or order his committal (*o*).

3. *Mode of enforcing orders and appeals from them.*

By the Companies Act, 1862, provision is made for enforcing the orders of the English, Irish, and Scotch Courts in those parts of the United Kingdom which are out of their respective jurisdictions (*p*).

(*l*) Rules, 1890, r. 128.

(*m*) Rules, 1890, r. 129 (1). *Semble*, the Board of Trade may enforce an account without showing that the liquidator has, or has had since the Act came into operation, any assets in his hands. See *Re Cornish* [1896], 1 Q. B. 99, a decision under the Bankruptcy Act, 1883, § 162.

(*n*) Rules, 1892, rr. 16 and 3 (1) (c). As to the application of these Rules, see r. 1 and *ante*, pp. 921, 922. As to applications under § 15 in the High Court, to which these rules do not apply, and in Courts other than the High Court, see Rules, 1890, r. 130A.

(*o*) Several such orders have been made for non-compliance with an order to pay monies into the Bank of England, as well as for non-compliance with an order to send in a proper statement. It is usual to proceed by writ of attachment; in bankruptcy it is usual to proceed by committal, see *Re Tatum*, 6 Mor. 107.

(*p*) §§ 122 and 123. See *Hollyford Copper Mining Co.*, 5 Ch. 93, as

Orders made by any Court exercising jurisdiction under the Companies (Winding-up) Act, 1890, are enforced in the same way as a judgment or order made in the exercise of its ordinary jurisdiction (*q*). Orders to pay money may be enforced by the ordinary writs of *fieri facias*, *levari facias*, *elegit*, and, if necessary, by sequestration (*r*); also by charging orders (*s*); and by attachment of debts (*t*). Where it is desired to issue a writ to the sheriff, *e.g.*, a *fi. fa.*, an order should be obtained for payment to the liquidator himself, and not for payment into the Bank to his account (*u*).

Appeals.

Orders and decisions of the Court may be appealed from in the ordinary way; but notice of appeal must be given within fourteen days after the making of the order complained of (*x*), and the time is calculated in the case of an appeal from an order in chambers from the time when the order was pronounced, or when the appellant first had notice thereof, and in all other cases from the time when the judgment or order is signed, entered, or otherwise perfected, or, in the case of a refusal of an application, from the date of refusal (*y*). The Court of Appeal, however, has power to extend the time (*z*).

By persons not parties.

A person not a party to the proceedings cannot appeal without special leave, although he is affected by the order (*a*).

to orders made by an Irish Court of Bankruptcy. To enforce in Ireland an English order to pay calls, it is not necessary that it should be made an order of the Chancery Division of the High Court in Ireland by formal order. See *Hercules Ins. Co.*, Ir. Rep. 6 Eq. 207.

(*q*) Rules, 1899 (1), embodied in Rules, 1890, as r. 20 (a), and Comp. Act, 1862, § 120.

(*r*) See as to persons abroad, *Re William Hall*, 2 Dr. & Sm. 284.

(*s*) As to which see *ante*, pp. 640 *et seq.*

(*t*) R. S. C. Ord. XLV. r. 1, which renders *Re Frankland*, L. R. 8 Q. B. 18; *Best* v. *Pembroke*, ib. 363; and *Cremetti* v. *Crom*, 4 Q. B. D. 225, no longer applicable.

(*u*) *Leeds Banking Co.*, 1 Ch. 150. See, also, *Waterloo Life Assurance Co.*, 4 N. R. 207.

(*x*) § 124. See R. S. C. Ord. LVIII., Rules 9 and 15; the time was formerly three weeks; *National Funds Ass. Co.*, 4 Ch. D. 305.

(*y*) R. S. C. Ord. LVIII. r. 15.

(*z*) § 124 and Rules, 1890, r. 176. *New Callao*, 22 Ch. D. 484; *Manchester Economic Building Society*, 24 Ch. D. 488; *Madras Irrigation and Canal Co.*, 23 Ch. D. 248; *Banner* v. *Johnston*, L. R. 5 H. L. 157. Under the older Acts the time could not be extended; *Ex parte Sanderson*, 1 Mac. & G. 306; *Re Green*, 1 Jur. N. S. 33; but see *Ex parte Besley*, 3 Mac. & G. 287.

(*a*) *Securities Ins. Co.* [1894], 2 Ch. 410.

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Rehearing.

A judge of the High Court cannot now rehear or alter an order made by himself or any other judge after it has been passed and entered, provided it accurately expresses the intention of the Court (*b*). But an order obtained *ex parte* or one which is in truth a nullity, may perhaps even now be discharged by the Court which made it, although fourteen days have elapsed (*c*).

Application for leave to appeal.

The application for leave to appeal after the fourteen days have expired ought not to be made *ex parte* (*d*). The Court refuses leave unless some good reason for the delay is given (*e*); even where an order has been made on the authority of a recent decision which has been reversed, leave to appeal against such order will not necessarily be granted (*f*).

Appeal from interlocutory orders.

No appeal lies from any interlocutory order without the leave of the judge or the Court of Appeal, except in certain cases, among which are included any decision determining the claim of any creditor, or the liability of any contributory, or the liability of any director or officer under the Companies Acts, in respect of misfeasance or otherwise (*g*). A motion in Court to discharge an order in chambers is not an appeal within the meaning of this rule (*h*).

Evidence on appeal.

Fresh evidence may be used on an appeal, even from a final order, by special leave, which, however, is only given where

(*b*) *St. Nazaire Co.*, 12 Ch. D. 88; *Preston Banking Co.* v. *William Allsup & Sons* [1895], 1 Ch. 141; *secus*, if the order has not been passed or entered, *Crown Bank*, 44 Ch. D. 634, or there has been a mistake within the "slip" order, R. S. C. Ord. XXVIII. r. 11. As to rehearing an order made in chambers, see *Ex parte Charlesworth*, 36 Ch. D. 299.

(*c*) *Ex parte Turnley and Oliver*, 8 Eq. 227. See, also, *Hopkins' Ex. case*, 4 De G. J. & Sm. 342; *Sanderson's case*, 3 De G. & S. 66; *Ex parte Besley*, 3 Mac. & G. 287.

(*d*) *Re Lawrence*, 4 Ch. D. 139.

(*e*) See, as to extending time for a cross-appeal, *Ex parte Kiveton Coal Co.*, 7 Ch. 730. In contributory cases leave to appeal, after the time for appealing had expired, was given in *Ex parte Holroyd*, 15 Jur. 696, and in *Ex parte Day*, 3 Jur. N. S. 1016, in both of which cases the appellant had paid calls. In *Ex parte Holroyd*, the appellant was put under terms not to disturb the payment he had made. In *Ex parte Day*, the Court refused to impose any such terms.

(*f*) Compare *Ebbw Vale Co.'s case*, 5 Ch. 112, with *Esdaile* v. *Payne*, 40 Ch. D. 526.

(*g*) Jud. Act, 1894, § 1.

(*h*) *Boake* v *Stevenson* [1895], 1 Ch. 358.

the Court sees that no injustice will be done by admitting it (*i*).

Appeals from chambers.

An order made by the judge in chambers cannot be appealed from unless the judge certifies that the matter was fully argued before him (*k*), or unless the person appealing has first moved in Court to discharge the order (*l*). If the registrar has made an order in chambers, it is conceived that the proper practice is to move in Court to discharge it (*m*).

There is no appeal from an order made by a judge whom the parties have treated as an arbitrator (*n*); nor will an appeal be entertained on a mere matter of judicial discretion (*o*).

Appeals from winding-up orders.

Winding-up orders themselves cannot be appealed from, without special leave, after fourteen days from their date (*p*).

Appeals from the Stannaries.

The Judicature Act, 1873, vested the appellate jurisdiction of the Lord-Warden of the Stannaries in the Court of Appeal (*q*). But it is apprehended that appeals from a County Court exercising the Stannaries jurisdiction will, like ordinary appeals, be to a Divisional Court (*r*).

Appeals from Board of Trade and Official Receiver.

Appeals from decisions of the Board of Trade, or from the Official Receiver acting in that capacity, must be brought within twenty-one days (*s*), and are heard in open Court (*t*).

(*i*) See *Weston's case*, 10 Ch. D. 579; *Ex parte Pearson*, 3 Ch. 443. See, also, R. S. C. Ord. LVIII. r. 4.

(*k*) *Warrant Finance Co.'s case*, 5 Ch. 88.

(*l*) *Re Pearce*, W. N. 1899, p. 114; *Boake* v. *Stevenson* [1895], 1 Ch. 358.

(*m*) Under the old practice a party had the right to be heard by the judge personally, no one being bound to abide by the decision of the chief clerk. See *Agriculturist Cattle Ins. Co.*, 3 De G. F. & J. 194; *Re Watts*, 22 Ch. D. 5. *Qu.* if this applies to the registrar of the High Court.

(*n*) See Jud. Act, 1873, § 49. *Ex parte Wilson*, 7 Ch. 45.

(*o*) *Thames Plate Glass Co.* v. *Land and Sea Telegraph Co.*, 6 Ch. 643; and see the cases on the appointment of liquidator under the old practice, *infra*, p. 967, and *ante*, p. 934.

(*p*) *Ante*, p. 894.

(*q*) 36 & 37 Vict. c. 66, § 18 (3). The section of the Stannaries Act, 1869 (32 & 33 Vict. c. 19, § 32), which required a deposit, has been repealed by the Stannaries Court Abolition Act, 1896.

(*r*) See *New Par Consols* [1898], 1 Q. B. 573. See, too, Comp. Act, 1862, § 124.

(*s*) Rules, 1890, r. 70.

(*t*) Rules, 1892, 3 (1). Rules, 1890, r. 5 (*e*). *National Wholemeal, &c., Co.* [1892], 2 Ch. 457. As to appeals from the liquidator, see *infra*, p. 983, note (*c*). The time for appeal may be enlarged under Rules, 1890, r. 176.

SECTION VIII.—THE CONTROL OF THE BOARD OF TRADE OVER COMPANIES IN LIQUIDATION.

The Companies (Winding-up) Act, 1890, placed the winding up of companies situate in England and Wales to a large extent under the control of the Board of Trade, and conferred important powers and duties upon the Official Receiver, an officer of the Board. It is proposed to examine shortly the more important provisions of the Acts and Rules on these subjects; it must, however, be borne in mind that the provisions in question, with some exceptions, apply only to companies which are being wound up under a compulsory order, and that the Official Receiver has no powers or duties in connection with companies which are being wound up voluntarily, or under the supervision of the Court (*u*). The exceptions referred to are contained in §§ 10, 14, and 15 of the Act, and have been already referred to (*x*).

1. *The Board of Trade.*

General supervision of companies in liquidation.

The most important duties of the Board of Trade are those relating to the general supervision over the conduct of the liquidation proceedings; but as these duties relate to the Official Receiver and the liquidator, it will be more convenient to postpone their examination until the position of those officers is being considered.

Custody of monies.

The Board of Trade is also entrusted with the general control and custody of all monies received in the course of winding-up proceedings under the Companies (Winding-up) Act, 1890 (*y*). These monies are paid in to the Bank of England to an account called the Companies Liquidation Account, and provision is made for the investment of such part of them as is not immediately required, and for the subsequent sale of such investments when necessary; the dividends on these investments are dealt with as the Treasury may direct (*z*).

(*u*) See §§ 31 & 32.

(*x*) As to § 10, see *ante*, pp. 940 *et seq.*; as to § 14, *ante*, p. 860; as to § 15, *ante*, pp. 946 *et seq.*

(*y*) See Act, 1890, §§ 11, 16, 17, and Rules, 1890, rr. 80–82, and forms 43 & 44.

(*z*) § 16.

The Board of Trade is also to keep a separate account in respect of each company (*a*); and whenever the cash balance to the credit of any company is, in the opinion of the committee of inspection, in excess of what is required for the time being to answer demands on the company's estate, the Board of Trade is, at the request of the committee, to invest the amount not required in Government securities (*b*), and at the like request to sell the securities when the money is wanted to answer such demands (*c*): the dividends on these investments are paid to the credit of the company (*d*).

Audit of accounts.

The accounts of the Board of Trade under the Act are subject to audit by the Treasury (*e*), whose duty it is to lay annual accounts before both Houses of Parliament (*f*).

Appeals from Board of Trade.

The Act of 1890 gives a right to appeal from the Board of Trade to the High Court in two cases, viz., against a decision of the Board in respect of a claim to any money paid in to the Companies Liquidation Account under § 15 of the Act of 1890 (*g*), and against the grant or refusal by the Board of the release of a liquidator (*h*). An appeal must be brought within twenty-one days (*i*), and is heard in open Court (*k*).

Officers of the Board of Trade.

The Board of Trade is empowered to appoint, with the approval of the Treasury, and to dismiss such officers as may be required for the execution of the Act (*l*). The remuneration of these officers is fixed by the Board of Trade, with the sanction of the Treasury (*m*). Under these powers the Board of Trade has appointed, in addition to Official Receivers and assistant Official Receivers, whose duties will be noticed hereafter, an Inspector-General in Companies Liquidation, to whom is entrusted, subject to the control of the Board of Trade, the general direction of the Bankruptcy Department in connection with the liquidation of companies (*n*).

Inspector-General.

(*a*) § 17.
(*b*) § 17 (2), Rules, 1890, r. 134 (1), form 83.
(*c*) § 17 (3), Rules, 1890, r. 134 (2), form 84.
(*d*) § 17 (4).
(*e*) § 28 (2).
(*f*) § 28 (1).
(*g*) § 15 (5).
(*h*) § 22 (1).
(*i*) Rules, 1890, r. 170. The time may be enlarged under r. 176.
(*k*) Rules, 1892, r. 3 (1) (b).
(*l*) § 27 (1).
(*m*) § 27 (2).
(*n*) See order of Board of Trade, 1st January, 1891.

Bk. IV. Chap. 1. Sect. 8.

Annual Reports, &c.

The officers of the Court acting in the winding up of companies are to make returns to the Board of Trade, and from these returns the Board is to prepare books which, under the regulations of the Board, are open for public information and searches. The Board is also to make an annual report of all matters judicial and financial within the Act, and to lay it before both Houses of Parliament (*o*).

Rules and Forms.

The power of making rules to carry the Act of 1890 into effect is vested in the Lord Chancellor, with the concurrence of the President of the Board of Trade (*p*). The Board of Trade may also alter any forms in the Appendix to the Rules which relate to matters of an administrative and not of a judicial character (*q*), and may issue general orders and regulations for the purpose of regulating such matters (*r*).

2. *The Official Receiver.*

Official Receiver.

The Official Receiver in the liquidation of a company is the Official Receiver attached for bankruptcy purposes to the Court in which the petition for winding up the company is presented, or some person appointed for the purpose by the Board of Trade (*s*). There are at present two Official Receivers under the Companies (Winding-up) Act attached to the High Court. Official Receivers are officers of the Court (*t*).

Deputies, Assistants, &c.

The Board of Trade may also appoint an officer to act as deputy for the Official Receiver (*u*), and, if necessary, assistant Official Receivers, who are also officers of the Court (*x*). The Board of Trade may also determine what duties an Official Receiver must perform personally, and what may be delegated

(*o*) § 29, Rules, 1890, rr. 150, 151, and forms 88 & 89. The Board of Trade may inspect and use the file of proceedings. Rules, 1892, rr. 32 & 33.

(*p*) § 26, and *ante*, p. 921.

(*q*) Rules, 1890, r. 3 (2).

(*r*) Ib. r. 175. As to documents, &c., issued by Board of Trade being evidence, see Act, 1890, § 30.

(*s*) Act, 1890, § 4 (2). Rules, 1890, r. 2 (a). Notice of an application for the transfer of proceedings from one Court to another must be given to the Official Receiver, r. 10. Where proceedings are transferred from one Court to another, see rr. 12, 13, & 14.

(*t*) See Rules, 1890, r. 165 and note on public examinations, W. N. 1894, p. 44.

(*u*) Rules, 1890, r. 162.

(*x*) Ib. r. 165. There are at present three assistant Official Receivers attached to the High Court.

to his clerks or subordinates (*y*). Moreover, in the absence of an Official Receiver, any officer of the Board of Trade authorised by them or any clerk of the Official Receiver authorised by him, may, by leave of the Court, in certain cases act on his behalf (*y*).

Removal. Remuneration.

The Official Receiver may be removed by the Board of Trade (*z*), and his remuneration is fixed by the Board with the concurrence of the Treasury (*a*).

When he is liquidator.

On a compulsory order being made by the Court for winding up a company, the Official Receiver becomes provisional liquidator by virtue of his office (*b*); and unless a liquidator is appointed by the Court, he is the liquidator of the company (*c*). Moreover, if there is a vacancy in the office of liquidator, he becomes liquidator during the vacancy (*d*). The position and duties of the Official Receiver as liquidator will be noticed hereafter.

When he is not liquidator. Duties to liquidator.

When a liquidator is appointed by the Court, the Official Receiver must hand over to him all proofs of debts which he may have received (*e*), put him in possession of the property of the company upon receiving payment of his charges and expenses, give him all necessary information respecting the affairs of the company (*f*), and also account to him (*g*). If the liquidator is dissatisfied with the Official Receiver's accounts, he may report the matter to the Board of Trade (*h*). If the Board of Trade neglect or refuse to act in the matter, the liquidator should apply to the Court for directions (*i*).

Duties as Official Receiver.

The chief duties, however, imposed upon the Official Receiver in his capacity of Official Receiver are to summon the first meetings of creditors and contributories, to make reports to the Court, and in such reports to call the attention of the Court

(*y*) Ib. r. 166 and r. 2 (a).

(*z*) Ib. r. 163.

(*a*) Act, 1890, § 27 (2).

(*b*) Act, 1890, § 4 (1), and *infra*, p. 965.

(*c*) Ib. § 6, and *infra*, pp. 967 *et seq.*

(*d*) Ib. § 4 (4).

(*e*) Rules, 1890, r. 109. As to his power to receive proofs, see ib. r. 115.

(*f*) Ib. r. 161. And as to the books to be kept by the Official Receiver before a liquidator is appointed, see rr. 143, 144.

(*g*) Ib. r. 168.

(*h*) Ib. r. 168.

(*i*) See *Ex parte Fox*, 17 Q. B. D. 4, a decision on the corresponding rule in bankruptcy.

to any matters connected with the company which in his opinion demand inquiry.

First meetings of creditors and contributories.

When a winding-up order has been made, it is the duty of the Official Receiver to summon separate meetings of the creditors and contributories (*k*) of the company, in order to determine whether an application shall be made to the Court to appoint a liquidator in the place of the Official Receiver, and whether an application shall be made to the Court to appoint a committee of inspection to act with the liquidator, and who the members of such committee are to be (*l*). As soon as possible after these meetings have been held, the Official Receiver or the chairman of the meetings (*m*) must report the result of them to the Court (*n*).

Result of meetings.

Consideration of result by Court.

Upon the result of the meetings being reported to the Court, the Court may, if the meetings have passed the same resolutions, or resolutions identical in effect, upon the application of the Official Receiver, forthwith make the appointments necessary to give effect to them. In any other case the Court fixes a day for considering the resolutions and determinations of the meetings, deciding the differences, and making such appointments and orders as may be necessary (*o*). When a day has been fixed, the Official Receiver must give the requisite notice by advertisement (*p*). The consideration of the determinations of the meetings usually takes place in chambers before the registrar (*q*); and the Official Receiver and any creditor or contributory have a right to be heard (*r*). If the requisite majority is not obtained in favour of either of the resolutions, the Court may decide

(*k*) Including an alleged contributory. See Comp. Act, 1862, § 74.

(*l*) Act, 1890, § 6. The rules applicable to these meetings will be found in the schedule to the Act of 1890. As to notices, see also Rules, 1890, rr. 43, 44, & 46. As to evidence that notices were duly sent, ib. r. 50. Want of notice to some does not necessarily invalidate the meeting, ib. r. 55. As to how votes are to be reckoned, see Rules, 1892, r. 25. As to the time for lodging proxies, see Rules, 1892, r. 30.

(*m*) The Official Receiver may nominate a chairman. Act, 1890, First Sched. r. (5).

(*n*) Rules, 1890, r. 63 and form 32.

(*o*) Rules, 1890, r. 63 (2A). This Rule was substituted in April, 1895, for an earlier Rule which was considered by the Court in *Johannisberg Land, &c., Co.* [1892], 1 Ch. 583.

(*p*) Rules, 1890, r. 63 (3).

(*q*) See Rules, 1892, rr. 2, 3, and 4, and *Charles Reynolds & Co.*, W. N. 1895, p. 31.

(*r*) Rules, 1890, r. 63 (4).

the difference (*s*). In all cases the Court has a discretion (*t*), and will, if necessary, direct further meetings to be held (*u*). If no liquidator is appointed by the Court, the Official Receiver becomes liquidator (*x*).

Information to be given to Official Receiver.

To enable the Official Receiver to make proper reports to the Court, and otherwise to fulfil his duties under the Act, the liquidator, if the Official Receiver himself is not liquidator, must give him all necessary information and access to the books of the company (*y*).

Statement of affairs.

Moreover, when a compulsory order to wind up a company has been made, the Act requires that a statement, verified by affidavit, as to its affairs, containing particulars of its assets, debts, and liabilities, the names, residences, and occupations of its creditors, the securities held by them and the dates of such securities, and such other information as may be required by general Rules, or by the Official Receiver, shall be submitted to the Official Receiver (*z*). The statement is to be submitted and verified by one or more of the directors of the company and the secretary or other chief officer of the company, or by such former directors or officers of the company or persons having taken part in the formation of the company within a year before the winding-up order as the Official Receiver, subject to the direction of the Court, may require to do so (*a*). As soon as a compulsory order is made, it is the duty of the secretary or chief officer of the company, and of such of the other persons who are liable to make out the statement of affairs as the Official Receiver may require, to attend on him, and a note to this effect is added at the foot of the order (*b*). The statement must be in the prescribed form (*c*), and it is the duty of the Official Receiver to furnish the persons who are required by him to submit and verify it with the necessary

Persons to make it.

Form of statement.

(*s*) *Bloxwich Iron and Steel Co.*, W. N. 1894, p. 111. As to the requisite majority, see Rules, 1892, r. 25.

(*t*) Act, 1890, § 6, and *Johannisberg Land, &c., Co.* [1892], 1 Ch. 583.

(*u*) *Charles Reynolds & Co.*, W. N. 1895, p. 31; *Radford and Bright, Ld.* [1901], 1 Ch. 272, and ib. (No. 2) [1901], 1 Ch. 735; Comp. Act, 1862, § 91, and Act, 1890, § 23.

(*x*) Act, 1890, § 6 (3).

(*y*) Comp. Act, 1890, § 4 (3).

(*z*) Ib. § 7.

(*a*) Ib. § 7 (2).

(*b*) Rules, 1890, r. 38, and form 18.

(*c*) Ib. § 7 (1). Rules, 1890, form 33.

forms and instructions (*d*), and they must attend on him, and give him all the information he may require (*e*).

Time for statement.

The statement of affairs must be submitted within fourteen days from the date of the order, or within such extended time as the Official Receiver or the Court may direct (*f*). If the Official Receiver grants an extension of time, he may give a written certificate, which must be filed with the proceedings in the winding up. Such a certificate renders an application to the Court unnecessary (*g*).

Default in making statement.

If any person, without reasonable excuse, makes default in complying with the requirements of the Act relating to the statement of affairs, he is liable to a fine for every day during which the default continues (*h*). Any such default may be reported by the Official Receiver to the Court (*i*), and in a proper case the Court will, on his application, make an order directing the person in default to comply with the requirements of the Act; which order can be enforced by committal or attachment in the usual way (*k*).

Costs.

Any person who takes part in making out the statement of affairs is allowed his reasonable costs and expenses out of the assets of the company (*l*), but they will not be allowed unless sanctioned by the Official Receiver before being incurred (*m*).

Summary, filing, &c., of statement.

As soon as the statement of affairs has been made out the Official Receiver is to send a summary of it, with any observations he may think fit to make, to every creditor and contributory of the company (*n*). The statement itself is placed on the file of proceedings (*o*), and is open to the inspection of any person stating himself in writing to be a creditor or contributory of the company (*p*). After the statement of affairs has been

(*d*) Rules, 1890, r. 58 (1).

(*e*) Rules, 1890, r. 58 (2).

(*f*) Comp. Act, 1890, § 7 (4).

(*g*) Rules, 1890, r. 59.

(*h*) Comp. Act, 1890, § 7 (5).

(*i*) Rules, 1890, r. 61.

(*k*) *New Par Consols* [1898], 1 Q. B. 573, and *New Par Consols* (*No.* 2), [1898], 1 Q. B. 669, and Rules, 1890, r. 20A. The application for the order should be made to the judge himself. *Columbian Gold Mines*, W. N. 1894, p. 92.

(*l*) Rules, 1890, r. 62.

(*m*) Comp. Act, 1890, § 7 (3).

(*n*) Comp. Act, 1890, sched. 1, r. 3.

(*o*) Rules, 1890, r. 58.

(*p*) Comp. Act, 1890, § 7 (6). Any person making such a statement untruthfully is guilty of contempt of Court, and may be punished accordingly on the application of the Official Receiver.

made out, it is the duty of any person who has made it to attend on the Official Receiver, and give him all the information he requires with reference thereto (*q*).

Reports by Official Receiver.

When a compulsory order has been made, it is the duty of the Official Receiver, as soon as practicable after the receipt of the statement of affairs, to make a preliminary report to the Court as to the amount of capital issued, subscribed, and paid-up, and the estimated amount of assets and liabilities; and if the company has failed, as to the causes of the failure, and whether, in his opinion, further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company or the conduct of its business (*r*). The Official Receiver may also, if he thinks fit (*s*), make a further report or further reports stating the manner in which the company was formed, and whether, in his opinion, any fraud has been committed by any person in the promotion or formation of the company, or by any director or other officer of the company in relation to it since its formation, and any other matters which, in his opinion, it is desirable to bring to the notice of the Court (*t*). These reports should state the facts in a narrative form (*u*); in making them, the Official Receiver should act on his own responsibility as an officer of the Court, and not under instructions from the Board of Trade (*x*). If he makes a charge of fraud against any one, he should reduce the nature of the charge to as concise a point as possible (*y*).

Consideration of report.

The Court, on the application of the Official Receiver, fixes a day for the consideration of his report (*z*). The report is considered before the judge personally in chambers, and the Official Receiver, personally, or by counsel, or solicitor, is to attend, and give the Court any information or explanation which it may require (*a*).

(*q*) Rules, 1890, r. 60.

(*r*) Comp. Act, 1890, § 8 (1).

(*s*) This means that if he arrives at a judicial conclusion in his own mind that such facts are before him, and in proof, it becomes his duty. See *per* Halsbury, L. C., in *Ex parte Barnes*, A. C. [1896], p. 150.

(*t*) Ib. § 8 (2).

(*u*) Rules, 1890, r. 69.

(*x*) See note on Public Examinations, W. N. 1894, p. 44.

(*y*) *Civil, Naval and Military Outfitters, Ld.* [1899], 1 Ch. pp. 234, 235.

(*z*) Rules, 1890, r. 69.

(*a*) Rules, 1890, r. 70.

Public examination.

The power of the Court to direct the public examination of any officer or promoter who is charged with fraud in any further report of the Official Receiver presented under this section, and the matters connected with such an examination, have been already considered (*b*).

The existence of the powers conferred upon the Official Receiver and the Court by this section has considerable weight with the Court when the desirability of making a compulsory order is being considered (*c*).

Other powers of the Official Receiver.

The Official Receiver has certain other powers conferred upon him by the Act, which though noticed in connection with the matters to which they relate, may for convenience be shortly referred to here. He is empowered to present a petition for the winding up by the Court of any company which is being wound up voluntarily or under supervision (*d*); to act for the Board of Trade in the exercise of the functions of the committee of inspection when none is appointed (*e*); to apply to the Court to take proceedings under § 10 of the Act of 1890 against any promoter, liquidator, director, or other officer of the company for a misapplication of the company's property or funds, or any misfeasance or breach of trust (*f*); and to apply to the Court for the punishment as for contempt of Court of any person who has untruthfully stated himself to be a creditor or contributory for the purpose of obtaining inspection of the statement of the company's affairs (§ 7 (6)), or of the liquidator's statement required by § 15 (§ 15 (1)).

May be appointed receiver.

The Official Receiver may be appointed receiver on behalf of debenture holders or other creditors of the company (*g*).

Taxation of costs.

The costs of the Official Receiver are liable to taxation (*h*), and all bills and charges which are subject to taxation must be submitted to him, and he may attend at the taxation thereof (*i*).

(*b*) See *ante*, pp. 928 *et seq.*

(*c*) See *ante*, p. 860.

(*d*) Comp. Act, 1890, § 14, and *ante*, p. 860.

(*e*) Comp. Act, 1890, § 9 (9). Rules, 1890, r. 169. When the Official Receiver is also liquidator, see *Re Duncan* [1892], 1 Q. B. 331 and 879, a decision under the Bankruptcy Act.

(*f*) See as to this, *ante*, pp. 940 *et seq.*, and 945.

(*g*) Comp. Act, 1890, § 4 (6), and *ante*, p. 342.

(*h*) Rules, 1890, r. 22.

(*i*) Ib. rr. 23—25, and as to applications by persons to be allowed costs, see r. 26.

If the company has no available assets, the Official Receiver is not bound to incur any expense in relation to the winding up without the express directions of the Board of Trade (*k*).

Appeals from Official Receiver.

An appeal to the Court (*l*) against any act or decision of the Official Receiver in his capacity of Official Receiver (*m*) must be brought within twenty-one days (*n*), and be heard in open Court (*o*).

SECTION IX.—THE COMMITTEE OF INSPECTION.

Committee of inspection.

The Companies (Winding-up) Act, 1890, has given the Court power to appoint a committee of inspection in the winding up of companies to which that Act applies (*p*), if the creditors or contributories of the company desire such an appointment to be made, and has conferred certain powers upon the committee to which it will be convenient here shortly to refer. The provisions of the Act now under consideration only apply to companies which are being wound up under a compulsory order (*q*).

Appointment.

The appointment of a committee of inspection is one of the questions to be decided by the first meetings of the creditors and contributories which it is the duty of the Official Receiver to summon (*r*). If the appointment of the committee is decided upon, the creditors and contributories settle who are to be the members of the committee, and an application for their appointment is made to the Court (*s*); if any difference of

(*k*) Rules, 1890, r. 167.

(*l*) A right of appeal is given against his decision in respect of the costs to be allowed for the preparation of the statement of affairs, § 7 (4); in admitting or rejecting proofs when exercising the powers of a liquidator, Rules, 1890, r. 115; and in admitting or rejecting proofs as chairman of the first meeting of creditors, Act, 1890, first schedule, rr. 5 and 11.

(*m*) *National Wholemeal Bread Co.* [1892], 2 Ch. 457. Appeals from him as liquidator, as to which see *infra*, § 10, are heard in chambers.

(*n*) Rules, 1890, r. 170; the time may be extended, r. 76.

(*o*) Rules, 1892, r. 3 (1) (*b*), and in Courts other than the High Court, Rules, 1890, r. 5 (*e*).

(*p*) As to the application of the Act, see *ante*, p. 826.

(*q*) See for an order providing for a committee of inspection in the case of a company which was being wound up voluntarily under the supervision of the Court, *Watson & Sons, Ld.* [1891], 2 Ch. 55.

(*r*) Act, 1890, § 6, and *ante*, pp. 956, 957.

(*s*) Ib. and *ante*, p. 956.

opinion occurs between the creditors and contributories on this matter the Court is to decide between them (*s*). If a particular creditor or class of creditors with a substantial interest is unrepresented on the committee through no fault of his or their own, the Court may direct the liquidator to summon a meeting of creditors to consider what steps, if any, should be taken to reconstitute the committee, and may, if necessary, resummon the first meetings of creditors and contributories (*t*).

Irregular appointment.

No defect or irregularity in the appointment or election of a member of the committee will vitiate any act done by him in good faith (*u*).

When no committee is appointed.

If no committee of inspection is appointed, the Board of Trade, whose functions in this respect are performed by the Official Receiver (*x*), may, upon the application of the liquidator, exercise the powers conferred upon the committee by the Act (*y*).

Constitution.

The committee is composed of creditors and contributories, or persons holding general powers of attorney from them, in such proportions as may be agreed upon by the meetings of the creditors and contributories, or as, in case of difference, may be determined by the Court (*z*).

Meetings.

The committee are to meet at such times as they may appoint, or at least once a month, and meetings may be called at any time by the liquidator or any member of the committee (*a*).

Quorum.

The committee have no power to act unless a majority of the members is present at the meeting (*b*), that is, it is conceived, a majority of the members for the time being, and not necessarily a majority of the original number appointed, for the continuing members, provided they are not less than two, are empowered to act notwithstanding a vacancy in their body (*c*). If the necessary majority be present, the majority of those present may act for the committee (*d*).

(*t*) *Radford and Bright, Ld.* [1901], 1 Ch. 272, and ib. (No. 2), [1901], 1 Ch. 735.

(*u*) Rules, 1890, r. 177 (2).

(*x*) Ib. r. 169.

(*y*) Comp. Act, 1890, § 9 (9). When the Official Receiver is also liquidator, see *Re Duncan* [1892], 1 Q. B. 331 and 879, a decision under the Bankruptcy Act.

(*z*) Ib. § 9 (1).

(*a*) Ib. § 9 (2).

(*b*) Ib. § 9 (3).

(*c*) Ib. § 9 (8).

(*d*) Ib. § 9 (3).

Resignation and removal.

Any member may resign his office by notice in writing signed by him and delivered to the liquidator (*e*), and his office becomes *ipso facto* vacant if he becomes bankrupt, compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members who with himself represent the creditors or contributories, as the case may be (*f*); a member may also be removed by an ordinary resolution of the persons, either creditors or contributories, whom he represents (*g*).

Vacancy.

If any vacancy occurs in the committee the liquidator is forthwith to summon a meeting of the creditors or contributories, as the case may require, and the meeting may re-appoint the same, or appoint another, creditor or contributory to fill the vacancy (*h*). The continuing members of the committee, provided they are not less than two, may, as has been already mentioned, act notwithstanding a vacancy in their body (*i*).

Duties.

As to the monies of the company.

The duties imposed upon the committee of inspection by this Act and the rules thereunder relate to the monies of the company and to the control of the liquidator. The committee are the persons to apply to the Board of Trade to authorise the liquidator to open an account elsewhere than at the Bank of England, and to satisfy that body that it is for the advantage of the creditors and contributories that he should have this authority (*k*). It is also their duty to request the Board of Trade to invest the monies standing to the credit of the company, when the balance is more than is necessary to answer the demands for the time being on the company's estate, and to sell out such investments when money for that purpose is required (*l*).

Control of liquidator.

The committee settle the remuneration of the liquidator (*m*) and audit his accounts (*n*), and otherwise exercise a certain control over him, as will more fully appear when the position

(*e*) Ib. § 9 (4).
(*f*) Ib. § 9 (5).
(*g*) Ib. § 9 (6).
(*h*) Ib. § 9 (7).
(*i*) Ib. § 9 (8).
(*k*) Ib. § 11 (3). Rules, 1890, rr. 81 and 82, and forms 43 and 44.
(*l*) Comp. Act, 1890, § 17, and Rules, 1890, r. 134, and forms 83 and 84.
(*m*) Rules, 1890, r. 154, and *infra*, p. 971.
(*n*) Rules, 1890, rr. 135, 137, and 144.

of the liquidator is being examined; their sanction, or that of the Court, is required to enable the liquidator to exercise certain of the powers conferred upon him by the Act of 1890 (*o*), and they may give him directions concerning the administration and distribution of the company's estate, which he is bound to follow unless they are inconsistent with the provisions of the Companies Acts or with directions given to him by the creditors or contributories in their meetings (*p*).

Restrictions on members of committee.

Members of the committee of inspection may not without leave of the Court, purchase any part of the company's assets (*q*), or derive any profit from any transaction arising out of the winding up, or receive any payment for services rendered in connection with the administration of the assets, or for goods supplied to the liquidator for the company (*r*).

SECTION X.—THE LIQUIDATORS OF THE COMPANY.

Liquidators.

The actual management of the winding up of a company is entrusted to persons called liquidators, whose powers and duties are extremely important.

Effect of Companies (Winding-up) Act, 1890.

The Companies (Winding-up) Act, 1890, has introduced very considerable changes into the position and powers of liquidators of companies in England or Wales which are wound up under a compulsory order of the Court made after that Act came into operation. In such cases the Official Receiver becomes the liquidator by virtue of his office unless and until some other person is appointed liquidator; and the liquidator, or the Official Receiver acting as liquidator, is now controlled by the Board of Trade, and to a less extent by the committee of inspection, as well as by the Court. In considering his position it must not be forgotten that the only sections of the former Companies Acts dealing with this subject actually repealed by the Act of 1890 are that part of § 92 of the Act of 1862 by which the Court is to determine the security to be given by the liquidator, and § 97 relating to the

Application of former Acts.

(*o*) See Comp. Act, 1890, §§ 12 and 13, and *infra*, pp. 978 and 979

(*p*) Comp. Act, 1890, § 23.

(*q*) Rules, 1890, r. 156.

(*r*) Ib. rr. 158-160.

liquidator's power to appoint a solicitor to act for him. In other respects the provisions of the Companies Acts relating to an "official liquidator" are still applicable to the liquidators of companies governed by the Act of 1890 (*s*). In most instances these provisions have been modified by and incorporated into the Act of 1890 (*t*).

The Companies (Winding-up) Act, 1890, does not apply to companies in Scotland or Ireland, and the sections of the earlier Acts repealed by that Act are only repealed as to England and Wales (*u*). In the present chapter, however, the position of liquidators to whom the Act of 1890 does apply will be considered, the reader being warned to refer to the earlier Acts and the decisions upon them for the position of liquidators to whom that Act does not apply.

Liquidators are of two different kinds: the one called provisional liquidators, who are merely temporary officers in the nature of receivers and are appointed in order to protect the assets of the company until other liquidators are appointed (*x*); whilst the other kind of liquidators, formerly called official liquidators when the company was being wound up compulsorily, are the persons who have the actual management of the winding up.

1. *Provisional liquidators.*

Appointment of provisional liquidators.

A provisional liquidator may be appointed by the Court as soon as a petition for winding-up has been presented (*y*).

Before a winding-up order is made.

Before a winding-up order has been made, the Court may either appoint the Official Receiver (*z*) or any other person (*a*) to be provisional liquidator; but the usual practice when an

(*s*) Act, 1890, § 4 (3).

(*t*) See Ib. § 12, but not in all cases. See §§ 93, 94, 112 and 113 of the Act of 1862.

(*u*) Act, 1890, §§ 31 and 33.

(*x*) *Dry Docks Corporation of London*, 39 Ch. D. 306. See *Brettell* v. *Dawes*, 7 Ex. 307, as to the distinction between an interim and an official manager under the Winding-up Acts of 1848–49.

(*y*) Comp. Act, 1862, § 85, and see §§ 92, 196, 199, 204, and Comp. Act, 1890, § 4 (5).

(*z*) Act, 1890, § 4 (5), and Rules, 1890, r. 32. Notice of such an order must be given the Official Receiver, see Rules, 1892, r. 22.

(*a*) Act, 1862, § 85. *Unionist Club*, W.N. 1891, p. 64; *North Wales Gunpowder Co.* [1892], 2 Q. B. 220.

appointment is made before the hearing of the petition, now is to appoint the Official Receiver provisional liquidator, and to limit his powers to making an application to the Court for the appointment of a special manager (*b*).

When a person other than the Official Receiver is appointed provisional liquidator, he will usually be required to give security, though it would seem that security may be dispensed with (*c*).

An application for the appointment of a provisional liquidator before a winding-up order has been made is usually made in chambers.

It is not usual to appoint a provisional liquidator before the hearing of the petition, unless the company is the petitioner, or the petition is unopposed (*d*); and where a creditor who had presented a petition to wind up a company had obtained *ex parte* an order appointing a provisional liquidator, the order was afterwards discharged on the application of the company (*e*).

A provisional liquidator will not be appointed on a petition to wind up an insurance company until it is shown to be within 33 & 34 Vict. c. 61 (*f*).

The appointment of a provisional liquidator is not necessary in order to invalidate dealings with the company's property since the commencement of the winding up (*g*); nor to stay actions, &c., by creditors (*h*).

On a winding-up order being made.

When a winding-up order has been made, the Official Receiver becomes provisional liquidator by virtue of his office (*i*), and the Court then has no power to appoint any other person to be provisional liquidator (*k*); if any other person has been previously appointed, his appointment ceases (*l*). The Official

(*b*) *Bound & Co.*, W. N. 1893, p. 21. See, too, *Mercantile Bank of Australia* [1892], 2 Ch. 204, where further powers were given him.

(*c*) See *North Wales Gunpowder Co.* [1892], 2 Q. B. 220, and under the old practice, *Langham Skating Rink Co.*, 6 Ch. D. 102; *Hammersmith Town Hall Co.*, ib. 112.

(*d*) *Cilfoden Benefit Building Soc.*, 3 Ch. 462, and see Lord Romilly's observation in *Emmerson's case*, 2 Eq. 236, and *Hammersmith Town Hall Co.*, 6 Ch. D. 112.

(*e*) *Railway Finance Co.*, W. N. 1866, p. 196.

(*f*) *London and Manchester Industrial Association*, 1 Ch. D. 466.

(*g*) *Ante*, pp. 899 *et seq.*

(*h*) *Ante*, pp. 903 *et seq.*

(*i*) Act, 1890, § 4 (1).

(*k*) *North Wales Gunpowder Co.* [1892], 2 Q. B. 220.

(*l*) *Mercantile Bank of Australia* [1892], 2 Ch. 204.

Receiver, on becoming provisional liquidator, continues to act as such until he or another person becomes, and is capable of acting, as liquidator (*m*). It would seem that in the meantime he can exercise all the powers of a liquidator (*n*).

Special manager.

The Official Receiver, when provisional liquidator, may apply to the Court for the appointment of a special manager (*o*).

A provisional liquidator ought to be served with notice of any application to discharge or stay proceedings under a winding-up order (*p*).

2. *Liquidators.*

Appointment of liquidator.

For the purpose of conducting the proceedings in winding up a company, and assisting the Court therein, the Companies Act, 1862, empowers the Court to appoint one or more liquidators (*q*), and to remove them for due cause (*r*).

Former practice.

Under the old practice the appointment of the liquidators lay with the judge, and was made by an order in chambers (*s*). The appointment of any particular person as liquidator was so entirely a matter for the discretion of the judge, that the Court of Appeal would not review his decision (*t*); except under very special circumstances, or unless it could be shown that the judge had acted upon a wrong principle (*u*). But the same rule did not apply to appointments by the judge's chief clerk; the parties interested were entitled to have the appointment considered and determined by the judge himself; and if he

(*m*) Act, 1890, § 4 (1).

(*n*) See *English Bank of River Plate* [1892], 1 Ch. 391, a decision on Rules, 1890, r. 83.

(*o*) Act, 1890, § 5, and see *infra*, p. 969.

(*p*) *Ex parte Coleman*, 3 De G. & S. 139. As to his costs, see *ante*, p. 890.

(*q*) Comp. Act, 1862, § 92. Formerly called official liquidators, but not now, in England or Wales. See Comp. Act, 1890, § 4 (3).

(*r*) Ib. § 93, and in voluntary winding up, §§ 141 and 150.

(*s*) *General Financial Bank*, 20 Ch. D. 276. The liquidator was appointed on the hearing of the petition in *Commercial Discount Co.*, 32 Beav. 198, and *London, Bombay and Mediterranean Bank*, 1 Ch. 525.

(*t*) *London Quays, &c., Co.*, 3 Ch. 394; *Northern Assam Tea Co.*, 5 Ch. 644; *Albert Average Ass. Ass.*, 5 Ch. 597; *International Contract Co.*, 1 Ch. 523; *London, Bombay and Mediterranean Bank*, ib. 525. See, also, *Merchant Traders' Ship Loan and Association Co.*, 15 Jur. 981, and compare this with the case cited *infra* in note (*x*).

(*u*) *Albert Average Ass. Ass.*, 5 Ch. 597.

declined to reconsider an appointment by his chief clerk, an appeal lay (x). In order to put a stop to contests for the appointment of liquidator, the person nominated by the petitioner was usually preferred, unless some good reason could be adduced for not appointing him (y); and where several amalgamated companies were being wound up, the same person was preferred as liquidator in them all (z).

Present practice.

The sections of the Companies Act, 1862, which confer power upon the Court to appoint and remove liquidators, are still unrepealed, but the practice in relation to their appointment has been changed by the Companies (Winding-up) Act, 1890. Under the provisions of that Act, the Official Receiver, as has been already stated, becomes provisional liquidator so soon as a compulsory order is made, and continues to act until he or another person becomes and is capable of acting as liquidator (a). The question whether or not an application is to be made to the Court for appointing a liquidator in his place, is one of the questions to be decided by the first meetings of the creditors and contributories which it is his duty to summon (b), and it has been decided that the Court has no power to appoint a liquidator in his place until such an application has been made (c). The practice relating to the holding of these meetings, and the consideration of the determinations come to thereat, has been already considered (d); it seems only necessary to remind the reader that the Court in all cases has a discretion, and will, if necessary, direct further meetings to be held (e).

The principles which guide the Court in the choice of a liquidator, when there is an application before it for the appointment of a receiver on behalf of debenture holders, or

(x) *Agriculturist Cattle Insurance Co.*, 3 De G. F. & J. 194. See the observations in this case as to the employment of accountants.

(y) See *Albert Average Ass. Ass.*, 5 Ch. 597; *Northern Assam Tea Co.*, ib. 644.

(z) *Western Life Ass. Soc.*, 5 Ch. 396. See, also, 35 & 36 Vict. c. 41, § 4.

(a) Act, 1890, § 4 (1).

(b) Ib. § 6, and *ante*, p. 956.

(c) *John Reid & Sons, Ld.* [1900], 2 Q. B. 634.

(d) See *ante*, pp. 956 *et seq.*

(e) Ib. § 6. *Johannesberg Land, &c., Co.* [1892], 1 Ch. 583; *Charles Reynolds & Co.*, W. N. 1895, p. 31; *Radford and Bright, Limited* [1901], 1 Ch. 272, and ib. (No. 2) [1901], 1 Ch. 735.

where such a receiver has been already appointed, have been already noticed (*f*).

Security.

If any person other than the Official Receiver is appointed liquidator, he is not capable of acting until he has notified his appointment to the Registrar of Joint Stock Companies and given security to the satisfaction of the Board of Trade (*g*).

Notice of appointment.

The appointment must be advertised in such manner as the Court directs (*h*).

Irregular appointment.

No defect or irregularity in the appointment of a liquidator will vitiate any act done by him in good faith (*i*).

Vacancy.

If no liquidator is appointed by the Court, the Official Receiver is liquidator (*k*), and he is then styled Official Receiver and liquidator (*l*); and if any vacancy occurs in the office of liquidator, the Official Receiver is, by virtue of his office, liquidator during such vacancy (*m*). If any vacancy occurs, a new liquidator may be appointed in the same manner as directed in the case of a first appointment, and the Official Receiver, at the request of not less than one-tenth in value of the creditors or contributories, must summon meetings to determine whether the vacancy shall be filled (*n*).

Special manager.

The Official Receiver when he is a liquidator, either provisionally or otherwise, may, if satisfied that the nature of the estate or business of the company or the interests of the creditors or contributories require the appointment of a special manager (*o*) of the estate and business of the company other than himself, apply to the Court, and the Court may appoint a special manager for such time, with such powers, including

(*f*) See *ante*, p. 341.

(*g*) Act, 1890, § 4 (3). Rules, 1890, r. 67, and if he fails to give security, r. 68. The words in § 92 of the Companies Act, 1862, by which the Court was to determine the security to be given by the liquidator are repealed. (See § 33.) Under that section the appointment was operative before the security was given, *Ex parte Charlesworth*, 36 Ch. D. 303.

(*h*) Rules, 1890, r. 64, and forms 36 and 86 (6).

(*i*) Ib. r. 177 (2). See, too, Comp. Act, 1862, § 67.

(*k*) Act, 1890, § 6 (3).

(*l*) Rules, 1890, r. 66.

(*m*) Act, 1890, § 4 (4).

(*n*) Rules, 1890, r. 65.

(*o*) See Rules, 1890, r. 42, and for the rules regulating the security to be given and the accounts to be furnished by, and the removal of, a special manager, see ib., Rules 67, 68, and 172.

any powers of a receiver or manager, and with such remuneration as it thinks expedient (*p*).

Removal.

If the liquidator fails to give the required security the Court is to rescind the order appointing him, and if he fails to keep up his security, the Court may remove him (*q*). He is also liable to be removed from his office by the Board of Trade, if without authority he retains in his hands a sum exceeding 50*l.* for more than ten days (*r*), and also, probably, if he does not faithfully fulfil his duties, and if any complaint be made to the Board by any creditor or contributory with regard thereto (*s*).

Under Comp. Act, 1862.

The power to remove a liquidator upon due cause shown, which is conferred upon the Court by the Companies Act, 1862, is still in existence (*t*). This power is exercisable not only if the liquidator is personally unfit to act, but also whenever it is shown that it is for the general advantage of those interested in the assets that he should be removed (*u*), *e.g.*, where the principal creditors of an insolvent company offered to pay the other creditors in full if the winding up was entrusted to their own nominee (*x*); so where the great bulk of the unsecured creditors were not satisfied with the liquidator originally appointed (*y*). Personal unfitness includes favouritism to persons whose interests are opposed to those of others (*z*). The same principles apply to the removal of liquidators where the winding up is voluntary (*a*), or subject to the supervision of the Court (*b*). The wishes of the persons interested are always considered in these cases, although they cannot always be complied with.

(*p*) Act, 1890, § 5. For the order in which his remuneration is payable out of the assets, see Rules, 1890, r. 31.

(*q*) Rules, 1890, r. 68. This rule also enables the Court to remove a special manager in a similar case.

(*r*) Act, 1890, § 11 (4).

(*s*) Act, 1890, § 25 (1).

(*t*) Comp. Act, 1862, § 93. *Qu.* if it applies to the Official Receiver when liquidator.

(*u*) *Ex parte Charlesworth*, 36 Ch. D. 299, explaining *Sir John Moore Gold Mining Co.*, 12 Ch. D. 325.

(*x*) *Ex parte Charlesworth*, 36 Ch. D. 299.

(*y*) *Association of Land Financiers*, 10 Ch. D. 269.

(*z*) *Sir John Moore Gold Mining Co.*, 12 Ch. D. 325.

(*a*) *British Nation Life Ass. Assoc.*, 14 Eq. 492.

(*b*) *Marseilles, &c., Land Co.*, 4 Eq. 692.

A liquidator can appeal from an order removing him (c).

Release.

If the liquidator has not previously resigned or been removed, his release under § 22 of the Companies (Winding-up) Act, 1890, operates as a removal. Upon his resignation, release or removal, he is to deliver over to the Official Receiver or to the new liquidator, as the case may be, all his books and accounts relating to his office (d).

Remuneration.

The remuneration of the liquidator is fixed by the committee of inspection, unless the Court otherwise orders (e); but if there is no committee of inspection his remuneration is to be in accordance with the scale of percentage payable for the remuneration of the Official Receiver as liquidator (f), and this is the limit of the remuneration to which he is entitled (g).

Power to deprive liquidator of remuneration.

The Board of Trade have power to deprive a liquidator of all or part of his remuneration, if without authority he retains in his hands a sum exceeding 50*l.* for more than ten days (h); and the Court may deprive him of his remuneration if he or any person on his behalf has, except by the direction of a meeting of creditors or contributories, employed solicitation in obtaining proxies from the creditors or contributories, or in procuring his appointment as liquidator (i).

Payment and priority of remuneration.

The remuneration of the liquidator is payable out of the assets of the company (k), and its priority is regulated subject to any order of the Court by the Companies Winding-up Rules, 1890 (l).

Solicitor.

A liquidator may, with the sanction either of the Court or of the committee of inspection, employ a solicitor (m) or other

(c) *Ex parte Charlesworth*, 36 Ch. D. 299.

(d) Rules, 1890, r. 141.

(e) Section 93 of the Act of 1862 enabling the Court to fix the liquidator's remuneration is unrepealed. See under the old practice Rules, 1862, Rule 18, and the order of May, 1868, in 7 Eq. 105, note, and 3 Ch. lxiv., and *Cannan's claim*, 7 Eq. 102; *North of England Banking Co.*, 3 Mac. & G. 362, note; and *Mysore Reefs Gold Mining Co.*, 34 Ch. D. 14.

(f) Rules, 1890, r. 154, and the order of the Lord Chancellor, 17 Dec. 1891.

(g) Ib. r. 155.

(h) Act, 1890, § 11 (4).

(i) Ib. First Schedule, r. 18.

(k) Rules, 1890, rr. 31 & 154.

(l) Ib. r. 31. The remuneration is last but one in the order of priority. Under the old practice, see *Dronfield Silkstone Coal Co.* (No. 2), 23 Ch. D. 511; *Re Massey*, 9 Eq. 367.

(m) As to his right to employ a solicitor at a public examination, see Act, 1890, § 8 (4) & (5) and *ante*, p. 931. As to a solicitor's attendance in chambers, see Rules, 1890, r. 174.

agent to take any proceedings or do any business which he cannot do personally, but such sanction must be obtained before the employment, except in cases of urgency, when it must be obtained without undue delay (*n*).

Separate solicitors.

If necessary, separate solicitors may be appointed to attend to conflicting interests (*o*).

Costs.

The solicitor is entitled to payment of his costs (*p*) out of the assets of the company, in priority to payment of the liquidator's remuneration; but not in priority to the payment of expenses, which the liquidator has properly incurred (*q*).

Lien.

The solicitor has no lien on the file of proceedings in the winding up, nor on the documents relating thereto (*r*); nor has he any right to payment by the liquidator personally (*s*).

Monies received by liquidator.

The liquidator must pay all monies received by him into the Bank of England to the Companies Liquidation Account (*t*), unless he has, on the application of the committee of inspection, been authorised by the Board of Trade for special reasons to open an account elsewhere (*u*). If without the authority of the Board of Trade he retains a sum of money exceeding 50*l.* for more than ten days, and fails to explain the retention to the satisfaction of the Board, he must pay interest on the excess at the rate of 20 per cent. per annum, and any expenses occasioned by his default; besides being liable, as has already been mentioned, to lose all or part of

(*n*) Act, 1890, § 12 (4), *London Metallurgical Co.* [1897], 2 Ch. 262. Sect. 97 of Comp. Act, 1862, relating to the employment of a solicitor, is repealed as to England and Wales, see Act, 1890, § 33. Where there is no committee of inspection, and the Official Receiver is liquidator, see *Re Duncan* [1892], 1 Q. B. 331 & 879, a decision under the Bankruptcy Act.

(*o*) See *Western Life Ass. Society*, 5 Ch. 396.

(*p*) See as to the taxation of his costs, Rules, 1890, r. 22 *et seq.*, and the need for a certificate of employment, ib. r. 29. See as to a solicitor demanding more than the scale fee, *United Kingdom, &c., Building Association*, 40 Ch. D. 471.

(*q*) See Rules, 1890, r. 31, and *Re Massey*, 9 Eq. 367; *Dominion of Canada Plumbago Co.*, 27 Ch. D. 33.

(*r*) *Ex parte Pulbrook*, 4 Ch. 627.

(*s*) *Ex parte Watkin*, 1 Ch. D. 130; *Re Trueman's Estate*, 14 Eq. 278.

(*t*) Act, 1890, § 11 (2).

(*u*) Ib. § 11 (3), Rules, 1890, rr. 81, 82. If the balance to the company's credit exceeds 2,000*l.*, the liquidator may give notice to the Board of Trade, and the company will be entitled to interest at 2 per cent., see Act, 1890, § 18.

his remuneration and to be removed from his office (*x*). He is expressly forbidden to pay any sums received by him as liquidator into his private banking account (*y*).

Unclaimed or undistributed assets.

A liquidator, who has in his hands or under his control money representing unclaimed or undistributed assets which have remained unclaimed or undistributed for six months from their receipt, must at once pay it into the Companies Liquidation Account at the Bank of England; and special powers are given to the Court and Board of Trade to ascertain and get in such monies (*z*). If any person claims to be entitled to any such money the liquidator may give him a certificate that he is entitled, and the Board of Trade may act on such certificate; but an appeal lies from the Board of Trade to the High Court (*a*).

Garnishee orders.

A creditor of a person entitled to money standing to the credit of the Companies Liquidation Account cannot obtain a garnishee order attaching such money (*b*).

Accounts.

The liquidator is to submit his accounts to the committee of inspection for examination and audit by them (*c*), and to send his accounts every six months (*d*), and on the termination of the winding up to be audited by the Board of Trade. When they have been audited by the Board, one copy is kept by the Board and one is filed with the Court, and each copy is open to the inspection of any creditor or contributory, to whom also a printed summary of the accounts is to be sent (*e*).

Trading account.

If the liquidator carries on the business of the company he must keep a separate trading account, which is to be submitted to the committee of inspection not less than once a month (*f*).

The rules relating to the accounts of a liquidator do not,

(*x*) Act, 1890, § 11 (1).

(*y*) Ib. § 11 (6).

(*z*) See ib. § 15, Rules, 1890, rr. 128 *et seq.*, and *ante*, pp. 946 *et seq.*

(*a*) Ib. § 15 (5). As to appeals, see *ante*, p. 951.

(*b*) *Spence* v. *Coleman* [1901], 2 K. B. 199; and *infra*, p. 996.

(*c*) Rules, 1890, rr. 135, 137 (2) and 144 (2).

(*d*). On the first occasion the accounts are to be accompanied with a summary of the company's statement of affairs; see Rules, 1890, r. 136. If the liquidator, since his appointment or last audit, has neither received any monies nor made any payments, he is to make an affidavit to that effect, and send it to the Board of Trade at the time when he would transmit his accounts, ib. r. 140.

(*e*) Act, 1890, § 20, rr. 136–140.

(*f*) Rules, 1890, r. 137.

however, apply to the Official Receiver when he is liquidator; he is to account in such manner as the Board of Trade may direct (*g*).

Books to be kept by the liquidator.

It is also the duty of the Official Receiver or the liquidator when appointed to keep proper books, viz., a Record Book containing minutes of the proceedings of meetings and such other matters other than documents of a confidential nature (*h*) as may be necessary to give a correct view of his administration, and a Cash Book (*i*) in which he is to enter, from day to day, his receipts and payments and also the total weekly amount of the receipts and payments on his trading account (*k*). These books are to be submitted to the committee of inspection at least once in every three months (*l*), and any creditor or contributory of the company may, subject to the control of the Court, inspect them personally or by his agent (*m*). If necessary the Board of Trade may direct a local investigation of his books and vouchers (*n*).

Statements to be rendered by liquidator.

If the winding up is not concluded (*o*) within one year from its commencement, the liquidator must twice a year, until the winding up is concluded, send to the Registrar of Joint Stock Companies a statement, which is open to the inspection of any person who states himself in writing to be a creditor or contributory, containing particulars of the proceedings in and position of the liquidation. If a liquidator makes default in this respect he is liable to a fine not exceeding 50*l.* for each day during which he is in default. The Official Receiver or the liquidator may apply to the Court to punish for contempt any person untruthfully stating himself to be a creditor or contributory for the purpose of obtaining inspection of this statement (*p*).

Books of the company.

It is the duty of the liquidator to take possession of all the company's books and accounts (*q*). As between the liquidator

(*g*) Rules, 1890, r. 168 (3).

(*h*) Such documents need only be shown to a member of the committee of inspection, Rules, 1890, r. 143.

(*i*) Act, 1890, § 21; Rules, 1890, rr. 143, 144.

(*k*) Rules, 1890, r. 137 (1).

(*l*) Ib. r. 144 (2).

(*m*) Act, 1890, § 21.

(*n*) Ib. § 25 (3).

(*o*) As to when the winding up is considered to be concluded for this purpose, see Rules, 1890, r. 126.

(*p*) Act, 1890, § 15 (1) and (2), and Rules, 1890, rr. 127 *et seq.* See further as to these statements, *ante*, pp. 946 *et seq.*

(*q*) See Comp. Act, 1862, §§ 94 and 100. See, under the old Acts, *Pell's case*, 3 De G. & Sm. 170.

and the holders of debentures containing a general charge on the company's assets, the liquidator is entitled to the custody of such of the books as are not necessary to support the debenture holder's title, but the Court may from time to time make orders as to their custody (*r*).

Inspection.

The right of the creditors and contributories of the company to inspect its books and papers depends upon the order which the Court may think fit to make upon the subject (*s*). If an inspection of them is desired, an application must be made to the judge under § 156 of the Act of 1862 (*t*). An order for inspection will be made if the Court is satisfied that the inspection is wanted for a proper purpose (*u*); and liberty will be given to an accountant to attend if there are complicated accounts to be investigated (*x*). Generally speaking, inspection will only be allowed for the purposes of the winding up (*y*); and the liberty to inspect must not be abused; and the Court will interfere to prevent an improper disclosure of the contents of the books (*z*). The rules of the company as to inspection do not apply in a winding up (*a*), nor do the provisions contained in §§ 32 and 43 of the Companies Act, 1862 (*b*).

Liquidators' books evidence against contributories.

As between contributories and alleged contributories, the books, accounts, and documents of the company and of the liquidators are *primâ facie* evidence of the truth of all matters

(*r*) *Engel* v. *South Metropolitan Brewing, &c., Co.* [1892], 1 Ch. 442, and *ante*, pp. 315 and 343.

(*s*) Comp. Act, 1862, § 156. *Ex parte Walker*, 15 Jur. 853. As to the file of proceedings, see *ante*, p. 925; and as to depositions of public and private examinations, see *ante*, pp. 933 and 936.

(*t*) As to summoning the liquidator as a witness, see *Barned's Banking Co.*, 2 Ch. 350.

(*u*) As to the extent of production, and the affidavit which a liquidator can be required to make, see *Gooch's case*, 7 Ch. 207, and *Mutual Society*, 22 Ch. D. 714, and the cases in the next notes.

(*x*) Ib. and generally as to inspection by an agent, see *Credit Co.*, 11 Ch. D. 257, and *Bevan* v. *Webb* [1901], 2 Ch. 59, reversing ib. [1901], 1 Ch. 724.

(*y*) *North Brazilian Sugar Factories*, 37 Ch. D. 83, and see *Morgan's case*, 28 Ch. D. 620; and under the Stannaries Act, *West Devon Great Consols Mine*, 27 Ch. D. 106.

(*z*) See cases in note (*u*), *Williams* v. *Prince of Wales Co.*, 23 Beav. 338, and the undertaking given in *Bevan* v. *Webb* [1901], 2 Ch. 59.

(*a*) *Yorkshire Fibre Co.*, 9 Eq. 650.

(*b*) See as to § 32, the register of members, *Kent Coalfields Syndicate* [1898], 1 Q. B. 754; and as to § 43, the register of mortgages, *Somerset* v. *Land Securities Co.*, W. N. 1897, p. 29.

purporting to be therein recorded (*c*). This is a very important provision, and one of which unfair use might be made if there were no means of compelling liquidators to expunge from their books matters improperly inserted in them. But a liquidator is not entitled to charge a person with money without notice, and then require him to show that he does not owe it; and if any attempt to do so is made, the Court will order the entry to be removed, and throw upon the liquidator the onus of showing that such entry ought to be restored (*d*).

Extent to which the liquidator represented the company under Acts of 1848 and 1849.

Under the Winding-up Acts of 1848 and 1849, the property of the company vested in the official manager (*e*); and all actions and suits by or against the company had to be brought by or against him as its representative (*f*). He, however, only represented the company which was being wound up; and consequently actions in which it was sought to charge, not the company, but one or more of its contributories, individually, had to be brought against him or them, and not against the official manager (*g*). Moreover, where the company being wound up could not have been sued at law, either as a company or by a public officer, there an action against the official manager as the representative of the company could not be sustained. The Acts in question did not confer on companies any capacity of suing and being sued, but simply declared that companies having that capacity were to sue and be sued by their official manager (*h*). Consequently a company, not registered or in any way incorporated, but being a mere

(*c*) § 154, and see *Arnot's case*, 36 Ch. D. 702.

(*d*) *Ex parte Chadwick*, 15 Jur. 597.

(*e*) 11 & 12 Vict. c. 45, §§ 29 and 30.

(*f*) Ib. §§ 50 and 51. See, on this subject, *Grand Trunk Rail.* v. *Brodie*, 3 De G. M. & G. 146; *Riddick* v. *Deposit, &c., Association Co.*, 9 Ir. Com. Law Rep. 84; *McDowell* v. *Davis*, 8 ib. 42. As to the mode of describing him, see *Re Heritage*, Kay, App. 29. The official manager only represented the company if his appointment was valid. See *Official Manager of Plumstead Water Co.* v. *Davis*, 28 Beav. 545, and 2 De G. F. & J. 20, where the winding-up order and all the proceedings under it were invalid, the order having been made by the wrong Court.

(*g*) *Beardshaw* v. *Lord Londesborough*, 11 C. B. 498; *McDowell* v. *Doyle*, 7 Ir. Com. Law, 598; *Armstrong* v. *Normandy*, 7 Ex. 409.

(*h*) *Pritchard* v. *London and Birmingham, &c., Rail. Co., Re Weiss*, 15 C. B. 331; *Ernest* v. *Weiss*, 2 Dr. & Sm. 561.

association of individuals, could not sue or be sued by its official manager (*i*).

Under the Act of 1862.

In the foregoing respects the Companies Act, 1862, is very different from the older winding-up Acts. It is the duty of the liquidator to take into his custody the property and effects of the company (*k*): and if no liquidator is appointed, or during any vacancy in his appointment, the property of the company is in the custody of the Court (*l*); but the property of a company registered under the Act does not vest in the liquidator, and all actions are taken and continued by and against the company in its corporate name (*m*). In the case, however, of an unregistered company, the Court has power to make an order vesting its property in the liquidator; and, if such an order is made, he may sue and be sued in his official name, or in such other name as the Court may direct, as the representative of the company (*n*). If under such an order land is vested in several liquidators, they must all convey in order to pass the legal estate (*o*).

(*i*) Ib., and see *Russell* v. *Croysdill*, 11 Ex. 123, and *Ernest* v. *Croysdill*, 2 De G. F. & J. 175, where the plaintiff represented one provisionally registered company, and the defendant another.

(*k*) § 94. If property vested in the company becomes divested by the bankruptcy of the grantor, the liquidator must hand over such property to the trustee in his bankruptcy, see *Re Carl Hirth* [1899], 1 Q. B. 612. The doctrines of reputed ownership are not applicable to companies which are being wound up, *Crumlin Viaduct Works Co.*, 11 Ch. D. 755; *Gorringe* v. *Irwell India Rubber Works*, 34 Ch. D. 128.

(*l*) § 92. This section is still unrepealed, but under the Companies (Winding-up) Act, 1890, on any vacancy occurring, the Official Receiver becomes liquidator, see § 4 (4). The liquidator is himself in the nature of a receiver, see Rules, 1890, r. 90, and *Perry* v. *Oriental Hotel Co.*, 5 Ch. 420, and *ante*, pp. 341 and 342.

(*m*) See §§ 94, 95, 195, and 196. The same rule applies to applications to rectify the register. *Ex parte Kintrea*, L. R. 5 Ch. 95. See as to some acts which he may do in his own name, § 95 (7). A bill of sale given by the company, and not within the Bills of Sale Act, 1882, is valid as against the liquidator, although not registered, *Marine Mansions Co.*, 4 Eq. 601; but see now *ante*, pp. 310–312.

(*n*) See § 203. *Hercules Ins. Co.*, 11 Eq. 321, where the company was registered after the petition was presented. Liquidators are not personally liable to pay charges on property vested in them under this section, *Graham* v. *Edge*, 20 Q. B. D. 683.

(*o*) *Ebsworth and Tidy's contract*, 42 Ch. D. 23.

Even without a vesting order suits by liquidators in their own name but on behalf of unregistered companies have been held properly constituted when sanctioned by the Court (*q*).

Duties of liquidators.

The liquidators are to be described by their style of office, and not by their individual names (*r*); and they are to perform such duties in reference to the winding up of the company as may be imposed by the Court (*s*). They are officers of the Court, and if monies are paid to them under a mistake of law, the Court may order the mistake to be rectified (*t*).

Their duties, so far as they relate to the investigation of claims against the company, to settling the list of contributories, to making calls and distributing the assets of the company, will be noticed in the subsequent sections of this chapter. In the present section it is proposed to notice those general powers and duties which do not relate to these matters.

Power of liquidators where there is more than one.

Where more liquidators than one are appointed, it is for the Court to declare whether any act authorised or required by the statute to be done by the liquidator is to be done by all or any one or more of the persons so appointed (*u*).

Powers of liquidator.

A liquidator may, with the sanction of the Court or of the committee of inspection (*x*),

(*q*) See *Turquand* v. *Kirby*, 4 Eq. 123; *Turquand* v. *Marshall*, 6 Eq. 112, reversed, but not on this point, 4 Ch. 376. *Qu.* these decisions. As to proceedings by unregistered companies, see *ante*, pp. 385 and 763.

(*r*) § 94, and Act, 1890, § 4 (3). The Official Receiver, when acting as liquidator, is styled Official Receiver and liquidator, Rules, 1890, r. 66. See, also, Comp. Act, 1862, § 203.

(*s*) § 94.

(*t*) See *Opera, Limited* [1891], 2 Ch. 154, reversed on other grounds [1891], 3 Ch. 260; and see, as to trustees in bankruptcy, *Ex parte James*, L. R. 9 Ch. 609; *Ex parte Simmonds*, 16 Q. B. D. 308, and the observations on these cases in *Hand* v. *Blow* [1901], 2 Ch. pp. 729, 730.

(*u*) § 92. As to the validity of the acts of one out of several liquidators, see *Ebsworth and Tidy's contract*, cited *ante*, note (*o*), and *Ex parte Agra and Masterman's Bank*, 6 Ch. 206, and cases there cited. See, under the older Acts, *Bass's case*, 1 De G. & Sm. 722.

(*x*) Act, 1890, § 12 (1). If there be no committee, its powers are vested in the Board of Trade, and exercised by the Official Receiver, ib. § 9 (9), and Rules, 1890, r. 169. If the Official Receiver is liquidator, see *Re Duncan* [1892], 1 Q. B. 331 and 879, a decision under the Bankruptcy Act. Formerly the Court alone could give the necessary

Powers of liquidator.

1. Carry on the business of the company, so far as may be necessary for the beneficial winding up of the same (*y*).

If he does so he must, as already mentioned, keep a separate trading account (*z*), and is forbidden, without the express sanction of the Court, to purchase any goods for this purpose from any person who is so connected with him that he would obtain a portion of the profit arising from the transaction (*a*).

2. Bring or defend legal proceedings in the name or on behalf of the company (*b*).

3. Make arrangements with creditors or contributories, and compromise all claims whether by or against the company (*c*). This subject will be discussed hereafter (*d*).

And may without such sanction (*e*)

4. Sell the property and claims of the company by auction or otherwise (*f*).

sanction. See §§ 95, 159, and 160 of the Companies Act, 1862. Section 96 of that Act is not repealed, so that the Court may by order enable the liquidator to exercise the two first-mentioned powers without its sanction or intervention. Such an order would, it is apprehended, be equivalent to the sanction of the Court, so that the sanction of the committee would not be needed. For such an order, see *Rochdale Property, &c., Co.*, 12 Ch. D. 775.

(*y*) Act, 1890, § 12 (1); and Act, 1862, § 95 (2). *British Waggon Co.* v. *Lea & Co.*, 5 Q. B. D. 149, and *Ex parte Emmanuel*, 17 Ch. D. 35, a decision under the Bankruptcy Act, 1869. The onus of proving that a particular contract is not beneficial for the winding up of the company lies on the person making the assertion, *Hire Purchase Co., Limited* v. *Richens*, 20 Q. B. D. 387.

(*z*) Rules, 1890, r. 137.

(*a*) Rules, 1890, r. 157.

(*b*) Act, 1890, § 12 (1); Act, 1862, § 95 (1). See, as to the sanction to take proceedings, *London Metallurgical Co.* [1897], 2 Ch. 262. See, as to unregistered companies, *ante* (*q*). A liquidator may serve a bankruptcy notice on a judgment debtor of the company, *Ex parte Winterbottom*, 18 Q. B. D. 446. The Court has no power to allow the solicitor of a creditor to institute proceedings in the name of the company to get in assets in order to pay his own costs, *Cape Breton Co.* v. *Fenn*, 17 Ch. D. 198. As to examining directors in actions against them, see *Madrid Bank* v. *Bayley*, L. R. 2 Q. B. 37.

(*c*) Act, 1890, § 12 (1); Act, 1862, §§ 159 and 160.

(*d*) *Infra*, pp. 984 *et seq.*

(*e*) Act, 1890, § 12 (2), and Act, 1862, § 95. Formerly the sanction of the Court was required in these cases, see § 95.

(*f*) Act 1890, § 12 (2); Act, 1862, § 95 (3). *Park Gate Waggon Co.*, 17 Ch. D. 234, and *Wood* v. *Woodhouse and Rawson United*, W. N. 1896, p. 4, claims against directors for misfeasance under § 165. Contracts of a personal character, *e.g.*, between author and publisher,

Powers of liquidator.

If the liquidator employs an auctioneer or other agent to carry out the sale, he is nevertheless responsible for the proceeds (*g*). Neither the liquidator nor any member of the committee of inspection may purchase, either personally or by any partner, clerk, agent or servant, any portion of the company's assets without the sanction of the Court. Any purchase contrary to this rule may be set aside by the Court (*h*). Apart from this rule, the liquidator stands in a fiduciary relation to the company; a sale to himself, or in which he is personally interested, is therefore liable to be set aside (*i*).

5. Do all acts and execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose use the company's seal (*j*).

6. Prove as a separate creditor against the estate of a bankrupt contributory for money due from him to the company (*k*).

7. Draw, make, accept and indorse bills of exchange and promissory notes in the name and on behalf of the company, and raise money on the security of its assets (*l*).

8. Take out, if necessary, in his official name letters of

cannot be sold, *Griffith* v. *Tower Publishing Co., Ld.* [1897], 1 Ch. 21; nor can contracts be transferred to a purchaser if such transfer imposes an extra burden on the other contracting party, *Tolhurst* v. *Associated Portland Cement Manufacturers* [1901], 2 K. B. 811. See, as to transferring the business of the company, *infra*, p. 990. As to opening biddings, see *Northumberland and Durham Banking Co.*, 9 W. R. 584; and as to getting in the legal estate, *Sheerness Waterworks Co.* v. *Polson*, 3 De G. F. & J. 36, and 29 Beav. 70; where land is vested in more than one liquidator by an order under § 203, all must convey, *Ebsworth and Tidy's contract*, 42 Ch. D. 23; as to selling, subject to alleged incumbrances, *Radley* v. *Bramall*, 12 Eq. 472; as to purchases by old directors, and irregular proceedings, at the sale, see *Alexandra Hall Co.*, W. N. 1867, p. 67.

(*g*) Rules, 1890, r. 142. The agent must pay over the gross proceeds of sale without deducting his costs and charges, which will be paid to him on the production of the necessary certificate of the taxing master, ib. and rr. 27 and 29.

(*h*) Rules, 1890, r. 156.

(*i*) *Silkstone and Haigh Moor, &c., Co.* v. *Edey* [1900], 1 Ch. 167.

(*j*) Act, 1890, § 12 (2); Act, 1862, § 95, (4).

(*k*) Act, 1890, § 12 (2); Act, 1862, § 95 (5). As to his power to petition for an adjudication of bankruptcy against a contributory, see *Williams* v. *Harding*, L. R. 1 H. L. 9.

(*l*) Act, 1890, § 12 (2); Act, 1862, § 95 (6). The Court will not allow a liquidator to give acceptances which are valueless, *Contract Corporation, Ebbw Vale Company's claim*, 8 Eq. 14. The liability of the company upon such bills or notes is the same

Powers of liquidator.

administration to any deceased contributory, and do any other act that may be necessary for obtaining payment of any monies due from a contributory or his estate, and which cannot be conveniently done in the name of the company (*m*).

9. Do and execute all such other things as may be necessary for winding up the affairs of the company and distributing its assets (*n*).

Getting in assets.

The liquidator is also empowered as an officer, and under the control of the Court, to collect the assets of the company, and to exercise the summary powers conferred upon the Court for this purpose by § 100 of the Companies Act, 1862 (*o*), and to summon meetings of the creditors and contributories for the purpose of ascertaining their wishes in all matters connected with the winding up (*p*).

Summon meetings.

Cost-book company.

When the company being wound up is a cost-book mining company governed by the Stannaries Act, 1887, it is the duty of the purser or other person having possession of the club funds of the mine to account for them to the liquidator, who is empowered to recover them, and whose duty it is to apply them in accordance with the rules of the club (see 50 & 51 Vict. c. 43, § 13 (2)).

Liability of liquidators.

Although for some purposes a liquidator stands in a fiduciary relation towards the company (*q*), and is liable to proceedings under § 10 of the Companies (Winding-up) Act, 1890, for misfeasance (*r*), he is not a trustee for the individual creditors

as if the company had issued them in the course of its business: see the section. As to negotiating bills in order to avoid a set-off, see *Smith, Fleming & Co.'s case*, and *Gledstanes & Co.'s case*, 1 Ch. 538, noticed in § 12 (3) of the present chapter.

(*m*) Act, 1890, § 12 (2); Act, 1862, § 95 (7).

(*n*) Act, 1890, § 12 (2); Act, 1862, § 95 (8). As to reconstructing the company, see *Wreck Recovery Salvage Co.*, 15 Ch. D. 353.

(*o*) Act, 1890, § 13; Act, 1862, §§ 98 and 100; and Rules, 1890, rr. 89-91; and *ante*, p. 939. In the exercise of these powers the liquidator is in the position of a receiver, see Rule 90. The Court has no power to order securities deposited under the Mortgage Debenture Acts to be handed over to the liquidator, unless they have been redeemed or sold, *Somerset* v. *Land Securities Co.* [1894], 3 Ch. 465.

(*p*) Act, 1890, § 13; Act, 1862, § 91; Rules, 1890, r. 47. For the rules governing these meetings, see rr. 47-57; as to proxies, rr. 123-125; and as to counting votes, Rules, 1892, r. 25. As to his duty to consult and carry out the wishes of the creditors and contributories, see Act, 1890, § 23, and *infra*, p. 982.

(*q*) See *Silkstone and Haigh Moor, &c., Co.* v. *Edey* [1900], 1 Ch. 167, *ante*, p. 989.

(*r*) See *ante*, pp. 940 *et seq.*

or contributories of the company; his position towards them is rather that of an agent of the company (*s*). Consequently he is not liable to them in damages for mere negligence in the performance of his duties, *e.g.*, for delay, without *mala fides* or personal misconduct, in paying a creditor's debt or handing over to a contributory his share in the company's assets (*t*). Moreover, proceedings cannot be taken against him under § 10 in respect of a breach of duty which has caused damage to an individual creditor or contributory, as distinguished from the company; in such a case the person damnified must proceed by action (*u*).

Control of liquidator: *a*) by creditors and contributories.

Subject to the provisions of the Acts, the liquidator must use his own discretion in the management and distribution of the company's estate (*v*), but he must have regard to any directions which may be given to him by a resolution of the creditors or contributories at any general meeting, or by the committee of inspection (*x*). In cases of conflict the directions of a general meeting override the directions of the committee of inspection (*y*). He may summon meetings of creditors and contributories for the purpose of ascertaining their wishes, and must do so at such times as they by resolution direct, or whenever requested by one-tenth in value of the creditors or contributories (*z*).

b) by the Court.

The Court has a control over the liquidator in the exercise of the powers conferred upon him by the Act of 1890, and any

(*s*) *Knowles* v. *Scott* [1891], 1 Ch. 717, explaining *dicta* in *Black & Co.'s case*, L. R. 8 Ch. 254; *Oriental Inland Steam Co.*, L. R. 9 Ch. 557; and *London and Caledonian, &c., Ins. Co.*, 11 Ch. D. 140.

(*t*) *Knowles* v. *Scott* [1891], 1 Ch. 717.

(*u*) *Hill's Waterfall Estate, &c., Co.* [1896], 1 Ch. 947; *South Australian Petroleum Fields, Ld.*, W. N. 1894, p. 189, cannot be relied upon; the question of jurisdiction was not argued.

(*v*) Act, 1890, § 23 (4). As to directions of a committee which are *ultra vires* or otherwise improper, see *Ex parte Emmanuel*, 17 Ch. D. 35; *Ex parte Cocks*, 21 Ch. D. 397; *Ex parte Strawbridge*, 25 Ch. D. 266, decided upon the Bankruptcy Act, 1869. A liquidator acting unreasonably, although under the instruction of a committee of inspection, may be liable personally for any costs incurred, see *Ex parte Brown*, 17 Q. B. D. 488.

(*x*) As to the committee of inspection, see *ante*, pp. 961 *et seq.*

(*y*) § 23 (1).

(*z*) § 23 (2) and § 13. As to the rules governing such meetings, see *ante*, note (*p*).

creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of the powers conferred upon him by § 12 of that Act (*a*). In addition to this the liquidator may apply to the Court for directions in relation to any particular matter arising in the winding up (*b*), and any person aggrieved by any act or decision of his may apply to the Court, which may confirm, reverse, or modify his act or decision, and make such order as may seem just (*c*).

Acts done without sanction of Court.

Liquidators who act without the sanction of the Court in matters requiring such sanction, expose themselves to serious risks; for if loss ensues to the company the liquidators may be compelled to make it good, and if they sue or defend an action unsuccessfully, they may have to pay the costs personally (*d*). But an order made in an action and directing a liquidator to pay the costs personally does not necessarily preclude him from afterwards obtaining such costs out of the assets of the company (*e*). The consequences of not obtaining the sanction of the Court where such sanction is required, may, moreover, in some cases invalidate the liquidator's proceedings; but it is apprehended that if he sues without leave the want of leave affords no defence to the action (*f*).

(*c*) by the Board of Trade.

The Board of Trade takes cognisance of the conduct of the liquidator, and if he does not faithfully perform his duties, or in the event of any complaint being made to the Board by any creditor or contributory, the Board is to inquire into the matter and take such action as may be deemed expedient.

(*a*) Act, 1890, § 12 (3) and § 13, and *ante*, pp. 978–981; the powers conferred by § 12 are those there numbered 1 to 9.

(*b*) § 23 (3).

(*c*) § 24. Except in cases of the rejection of the proof of a debt (*infra*, p. 994) and applications to remove a name from the list of contributories (*infra*, p. 1036) no time is fixed for appealing from the decision of a liquidator; in Courts other than the High Courts such appeals must be heard in open Court. Rules, 1890, r. 5 (*f*). As to who is a person aggrieved, see under the Bankruptcy Act, *Ex parte Official Receiver*, 19 Q. B. D. 174; *Ex parte Sidebotham*, 14 Ch. D. 458; *In re Lamb* [1894], 2 Q. B. 805.

(*d*) *London Metallurgical Co.* [1897], 2 Ch. 262; *Grand Trunk, &c., Rail. Co.* v. *Brodie*, 9 Ha. 823, and 3 De G. M. & G. 146; *Caldwell* v. *Ernest*, 27 Beav. 39 and 42.

(*e*) Ib. See, on this subject, *Consols Insurance Co.* v. *Wood*, 2 Dr. & Sm. 353, and *infra*, § 15.

(*f*) See the analogous cases in bankruptcy, *Lee* v. *Sangster*, 2 C. B. N. S. 1; *Piercy* v. *Roberts*, 1 M. & K. 4; *Ex parte Magnus*, 3 M. D. & D. 693; *Jones* v. *Yates*, 3 Y. & J. 373.

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The Board may also require the liquidator to answer any inquiry, may apply to the Court (*g*) to examine him or any other person on oath concerning the winding up, and may direct a local investigation of his books and vouchers (*h*).

Release.

When a liquidator has, so far as may be, concluded the winding up of a company, or has resigned or been removed from his office, the Board of Trade shall on his application (*i*) cause a report on his accounts to be prepared, and on his complying with their requirements shall take into consideration the report, and any objection which may be urged by any contributory, creditor, or person interested, and grant or withhold his release, subject, neverthless, to an appeal to the High Court (*k*). If the release is withheld, the Court may, on the application of any creditor or contributory or person interested, charge the liquidator with the consequences of any act or default of his contrary to his duty (*l*). An order of release discharges him from all liability arising from his conduct as liquidator, but it may be revoked upon proof that it was obtained by fraud or by suppression or concealment of any material fact (*m*). The release does not operate until the liquidator has handed over to the Official Receiver all books kept by him, and all books, documents, papers, and accounts in his possession relating to the office of liquidator (*n*). A notice of the order granting the release must be gazetted, and the liquidator is to provide the necessary stamp fee, which, however, he may charge against the company's assets (*o*).

SECTION XI.—COMPROMISES AND ARRANGEMENTS WITH CREDITORS AND CONTRIBUTORIES.

Compromises.

The liquidator is empowered, with the sanction of the Court or of the committee of inspection, to make arrangements with creditors and contributories, and to compromise all claims

(*g*) As to this application see Rules, 1890, r. 171.

(*h*) Act, 1890, § 25. See, also, §§ 11 and 15 (4), which have been already noticed, *ante*, pp. 946, 972, and 973.

(*i*) As to the notice to be given to creditors and contributories, see Rules, 1890, r. 148.

(*k*) Act, 1890, § 22 (1). As to such appeals, see *ante*, p. 951.

(*l*) Ib. § 22 (2).

(*m*) See *Ex parte Société Cockrill*, 3 Ch. D. 115; *Ex parte Carter*, 8 Ch. D. 731. Decided upon a similar clause in the Bankruptcy Act, 1869.

(*n*) Rules, 1890, r. 141.

(*o*) Ib. r. 149, and form 86 (7).

whether by or against the company (*p*). A proposed compromise will not be sanctioned by the Court in the absence of sufficient information as to the grounds on which the compromise is to be entered into (*q*). Nor will the Court compel a liquidator to enter into a compromise which he, on behalf of the company, opposes (*r*). A compromise entered into by a liquidator, and approved by a chief clerk, did not require the personal sanction of a judge to make it binding. But any person aggrieved by it was entitled to have it considered by the judge in whose chambers the winding up was proceeding (*s*). It is apprehended that the same rule will apply to compromises sanctioned by the registrar (*t*).

A compromise with the sanction of the Court is binding on all parties, including creditors (*u*), unless appealed against in due time (*x*).

But notwithstanding a compromise with a contributory, who is a transferee of shares, he remains liable to indemnify his transferor from all calls which may be made on him as a past member (*y*).

If it can be shown that the sanction of the Court was obtained by the misrepresentation or improper concealment of material facts, the compromise will be set aside by the Court which sanctioned it, although the time for appeal has passed (*z*).

Limit of power to compromise.

The power to sanction compromises under §§ 159 & 160 of the Companies Act, 1862, is confined to claims by or against

(*p*) Comp. Act, 1862. §§ 159 and 160, and Act, 1890, § 12 (1).

(*q*) *Ex parte Totty*, 1 Dr. & Sm. 273; and on appeal, 6 Jur. N. S. 849.

(*r*) *Pearson's case*, 7 Ch. 309. But this assumes that the liquidator is not himself opposing the wishes of those whom he represents.

(*s*) *Ex parte Garstin*, 10 W. R. 457.

(*t*) See the powers of the registrar, Rules, 1892, r. 4.

(*u*) See *Cleave* v. *Harwar*, 6 H. & N. 22, where proceedings by *sci. fa.* against a shareholder were stayed, a compromise having been entered into between him and the official manager under 20 & 21 Vict. c. 78, and see as to enforcing a compromise, *Gaudet Frères Steamship Co.*, 12 Ch. D. 882.

(*x*) *Lucy's case*, 4 De G. M. & G. 356; *Underwood's case*, 5 ib. 677; *Garstin's case*, 10 W. R. 457. See, also, *Hughes's case*, 1 De G. & Sm. 606, and 13 Jur. 530.

(*y*) *Roberts* v. *Crowe*, L. R. 7 C. P. 629; *Kellock* v. *Enthoven*, L. R. 9 Q. B. 241, and 8 ib. 458.

(*z*) *Central Darjeeling Tea Co.*, W. N. 1866, p. 361; *Clayke's case*, ib. 254; *Garstin's case*, 10 W. R. 457.

the company, and does not extend to claims by individual shareholders against the directors personally (*a*).

Opinions differed respecting the power of the Court to bind dissentient creditors or contributories by sanctioning arrangements approved by majorities of them (*b*).

33 & 34 Vict. c. 104.

The power of the Court in this respect has, however, been enlarged by the Joint Stock Companies Arrangement Act, 1870 (33 & 34 Vict. c. 104), which (§ 2) enacts that,

Where compromise proposed the Court may order a meeting of creditors, &c., to decide as to such compromise.

"Where any compromise or arrangement shall be proposed between a company, which is, at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the Court, under the Companies Acts, 1862 and 1867, or either of them, and the creditors of such company, or any class of such creditors, it shall be lawful for the Court, in addition to any other of its powers, on the application (*c*) in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct (*d*), and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy (*e*) at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court (*f*), be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company."

By the Companies Act, 1900, the provisions of this Act are made applicable as between the company and its members, or any class of its members (*g*).

(*a*) *Ex parte Hankey*, W. N. 1869, p. 226.

(*b*) See *Albert Life Ass. Co.*, 6 Ch. 381; and compare *Risca Coal and Iron Co.*, 30 Beav. 528 (an appeal was dismissed, on the ground that it was made too late. See 8 Jur. N. S. 900). *Commercial Bank Corporation of India and the East*, 8 Eq. 241. See, also, *Bank of Hindustan, &c.* v. *Eastern Financial Assoc.*, L. R. 2 P. C. 489. See generally as to the power of the Court to bind absent (though not dissentient) parties, *Collingham* v. *Sloper* [1894], 3 Ch. 716, and [1901], 1 Ch. 769.

(*c*) *Semble*, this application should be by summons in chambers.

(*d*) See, too, Comp. Act, 1862, § 91. When many creditors are abroad, the Court may direct subsidiary meetings to be held abroad. See *English, Scottish and Australian, &c., Bank* [1893], 3 Ch. 385.

(*e*) For form of proxy, see Practice Direction, W. N. 1896, p. 56. The Court may provide for the use by means of the telegraph of proxies executed abroad. See *English, Scottish and Australian Bank* [1893], 3 Ch. 385.

(*f*) The order is obtained on petition.

(*g*) Comp. Act, 1900, § 24. As to different classes where ordinary shares have been divided into preferred and deferred halves, see *Brighton and Dyke Rail. Co.*, 44 Ch. D. 28, and *infra*, c. 4, § 2.

Application of Act.

In the Act of 1870 the term creditors is construed in its widest sense, and includes every person who has a pecuniary claim against the company, whether actual or contingent (*h*); the Act applies to secured, as well as to unsecured, creditors, and arrangements under it may be sanctioned, though they deprive secured creditors of the benefit of their security either wholly or in part (*i*).

Classes of creditors, &c

Creditors whose interests as creditors are so dissimilar as to make it impossible for them to consult together with a view to their common interest, belong to different classes (*k*); but creditors who are also contributories may vote in the same class as creditors who are not contributories (*l*). The holders of policies of insurance issued by an insurance company whose policies have matured at the date of the meetings, form a different class of creditors from the holders of policies which have not matured (*m*).

Meetings and sanctions.

It is the duty of the Court to see that adequate notice of the meetings is given (*n*). The order in which the sanctions required are obtained is immaterial (*o*). The sanction of the majority in number of those present representing three-fourths in value of those present is sufficient. Only those present in person or by proxy are to be counted (*p*); but all present must be counted, whether they vote or not (*q*). Unanimity is not required, and the opposition of some creditors is not fatal (*r*). But schemes for arrangement under this Act have failed because of the impossibility of ascertaining and valuing the claims of the

(*h*) *Craig's claim* [1895], 1 Ch. 267, the case of a lessee who had assigned his lease to the company under a covenant of indemnity.

(*i*) *Alabama, New Orleans, &c., Co.* [1891], 1 Ch. 213; *Empire Mining Co.*, 44 Ch. D. 402. See, too, *Slater* v. *Darlaston Steel, &c., Co.*, W. N. 1877, pp. 139 and 165, and *Dynevor, &c., Collieries Co.*, 11 Ch. D. 605.

(*k*) See judgment of Bowen, L.J. [1892], 2 Q. B. p. 583. See, too, judgment of Lord Esher, ib. p. 580.

(*l*) See *Madras Irrigation Co.*, 1881, W. N., p. 171, and see *infra*, note (*x*).

(*m*) *Sovereign Life Ass. Co.* v. *Dodd* [1892], 2 Q. B. 573.

(*n*) *Alabama, New Orleans, &c., Co.* [1891], 1 Ch. 213, p. 245.

(*o*) *Dynevor, &c., Collieries Co.*, 11 Ch. D. 605.

(*p*) *Bessemer Steel and Ordnance Co.*, 1 Ch. D. 251; *Alabama, New Orleans, &c. Co.* [1891], 1 Ch. 213.

(*q*) See *Labouchere* v. *Lord Wharncliffe*, 13 Ch. D. p. 354, and Buckley, 7th ed. p. 634.

(*r*) *Tunis Rail. Co.*, 10 Ch. D. 270, note; aff. on appeal, W. N. 1874, p. 165, and case in last note.

creditors (*s*), and because those who voted for it had voted in respect of debentures payable to bearer and not produced, and had not voted *bonâ fide* in the interest of the company (*t*).

Duty of Court.

The Act confers upon a majority the power of binding a minority; the Court, therefore, will see that the power is properly exercised (*u*). In the absence of any objection the Court will be slow to differ from the decision of the majority, but it will not sanction a scheme unless satisfied that the provisions of the Act have been complied with, that the meetings have been properly convened and consulted, that the scheme is proposed *bonâ fide* in the interest of the creditors to be bound by it, that the majority are acting in good faith with a view to the interests of the class to which they belong, and are not coercing the minority in order to promote interests adverse to that class as a whole, and that the scheme itself is a reasonable one, and free from any such objection as would prevent an honest and intelligent man, a member of the class and acting alone in respect of his interest as such member, from giving his approval to it (*x*).

Requirements of the Court in particular cases.

If the scheme provides for the taking over of the assets of the company by a new company, the Court requires to be satisfied that the new company is properly constituted under conditions suitable for carrying the scheme into effect (*y*); if it provides for the acceptance of shares which are not fully paid-up, provision must be made for preventing the shareholders from improperly transferring such shares so as to avoid liability (*z*). If it provides

(*s*) *Albert Life Ass. Co.*, 6 Ch. 381.

(*t*) *Wedgwood Coal and Iron Co.*, 6 Ch. D. 627.

(*u*) As to the exercise by a majority of such powers, see, in addition to the cases cited below, the cases relating to the exercise by a majority of debenture holders of similar powers under their debentures, *ante*, p. 329; and to the reduction of capital, *ante*, p. 557; and to the alteration of articles of association, *ante*, p. 462.

(*x*) *Alabama, New Orleans, &c., Co.* [1891], 1 Ch. 213; *English, Scottish and Australian, &c., Bank* [1893], 3 Ch. 385; *London Chartered Bank of Australia*, ib. 540; *Dynevor, &c., Collieries Co.*, 11 Ch. D. 605; *Wedgwood Coal and Iron Co.*, 6 Ch. D. 627. Creditors who have other interests than those of the class to which they belong may nevertheless vote, but the Court will take the existence of such interests into consideration. See [1891], 1 Ch. pp. 243, 244.

(*y*) *English, Scottish and Australian, &c., Bank* [1893], 3 Ch. p. 400.

(*z*) *London Chartered Bank of Australia* [1893], 3 Ch. 540.

for the issue of new debentures, the Court will not allow powers of binding a minority, similar to those contained in the Act, to be given to the majority of the debenture holders, unless the sanction of the Court to the exercise of them is required (*a*). If it provides for the distribution of shares in another company to the contributories of the old company in respect of their shares therein, provision must be made giving to any dissentient contributories the rights to which they would be entitled in the case of a sale under § 161 of the Act of 1862 (*b*). If the scheme provides for the payment of costs and of remuneration to persons for carrying the scheme into effect, provision must be made for their taxation and allowance by the Court (*c*); and where the whole of the assets are taken over by another company, the Court generally requires a provision to be inserted, whereby that company undertakes to obey any order of the Court as to any proceedings which the Court may think ought to be taken against the officers of the old company (*d*).

Sanction refused.

The Court has refused to sanction a scheme which provided for underwriting the capital of the purchasing company (*e*). Where a company induced a judgment creditor not to issue execution against it, and petitions by a creditor and the company were then presented for winding up the company, and a scheme of arrangement was proposed and assented to by all the creditors except the judgment creditor who opposed it, the Court declined to sanction the scheme (*f*).

Effect on sureties of company.

An arrangement sanctioned under this Act does not release a surety for the company's debts from his obligation to the company's creditor (*g*). If he is compelled to pay the debt,

(*a*) *Land Mortgage Bank of Florida*, W. N. 1896, p. 48.

(*b*) See the terms imposed in *Canning Jarrah Timber Co.* [1900], 1 Ch. 708. And as to sales under § 161, *infra*, chap. 3.

(*c*) *Mortgage Insurance Corp.*, W. N. 1896, p. 4.

(*d*) Practice Note, W. N. 1894, p. 166. This does not apply in the case of a perfectly solvent company selling its business.

(*e*) See the terms imposed by the Court of Appeal in *Canning Jarrah Timber Co.* [1900], 1 Ch. 708. But see now as to the payment of underwriting commissions, Comp. Act, 1900, § 8, *ante*, pp. 43, 44.

(*f*) *Richards & Co.*, 11 Ch. D. 676.

(*g*) *Dane* v. *Mortgage Ins. Corp.* [1894], 1 Q. B. 54; *London Chartered Bank of Australia* [1893], 3 Ch. 540. See, too, *Ex parte Jacobs*, L. R. 10 Ch. 211; *Slater* v. *Jones*, L. R. 8 Ex. 186, and *Finlay* v. *Mexican*

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he is subrogated to the rights of the creditor under the arrangement (*h*).

Effect on creditors abroad.

The Act does not apply to the colonies; therefore a compromise sanctioned under it cannot be set up by the company as a defence to an action in a colonial Court by a colonial creditor who has not assented to it and who claims payment of his debt in full (*i*).

Appeals.

A creditor or contributory who has not appeared at the hearing of the petition to sanction a scheme, cannot appeal against the order made thereon without the leave of the Court (*k*).

Transfer of business.

The assets of the company may be sold and realised in the ordinary way by auction or private contract as may be thought best (*l*). Doubts have been expressed as to the power of the Court in a compulsory winding up to sanction a sale of a company's assets *en masse* to a new company formed to carry on its business (*m*). It is, however, to be remembered that the Court can stay the winding-up proceedings altogether on such terms as it thinks proper (*n*); and this power, coupled with that of selling the assets of the company (*o*), and of compromising with the creditors and contributories (*p*), is, it is conceived, sufficient to give the Court jurisdiction to sanction such a sale as that under consideration upon any terms the Court may judicially approve (*q*); the jurisdiction under the Joint Stock Companies Arrangement Act, 1870, is free from doubt (*qq*).

Albert Life Assurance Company's case.

But in the case of the *Albert Life Assurance Company* (*r*),

Investment Corporation [1897], 1 Q. B. 517, and *ante*, p. 330.

(*h*) *Dune* v. *Mortgage Ins. Corp.* [1894], 1 Q. B. 54; *Finlay* v. *Mexican Investment Corp.* [1897], 1 Q. B. 517.

(*i*) *New Zealand Loan, &c., Co.* v. *Morrison* [1898], A. C. 349, and *Gibbs* v. *Société des Métaux*, 25 Q. B. D. 399.

(*k*) *Securities Insurance Co.* [1894], 2 Ch. 410.

(*l*) See *ante*, p. 979.

(*m*) See §§ 89, 91, 95, 159, and 160. The doubt has arisen by reason of § 161 being in terms only applicable to a voluntary winding up. The Act 31 & 32 Vict. c. 68, only applies to companies being wound up when it passed.

(*n*) § 89, *ante*, p. 895.

(*o*) § 95.

(*p*) *Ante*, pp. 984 *et seq.*

(*q*) See as to winding up, subject to supervision. *Ex parte Poole's Executors*, 8 Ch. 702; *Imp. Merc. Credit Ass.*, 12 Eq. 504; *Agra and Masterman's Bank*, 12 Eq. 509, note.

(*qq*) See *English, Scottish, and Australian, &c., Bank* [1893], 3 Ch. 385; *London Chartered Bank of Australia*, ib. 540; *Alabama, New Orleans, &c., Co.* [1891], 1 Ch. 213; *Craig's claim* [1895], 1 Ch. 267.

(*r*) 6 Ch. 381, and see *General Exchange Bank*, W. N. 1867, p. 63.

which had absorbed several other companies, the Lord Justice James considered that a majority of creditors could not bind a minority to accept a composition (*rr*); and he refused to sanction a scheme for reconstructing the Albert Company, and for paying its creditors and the creditors of the absorbed companies a composition, by calls, and for transferring to another company the assets of the Albert, and the monies proposed to be raised by calls.

SECTION XII.—PROOF AND PAYMENT OF DEBTS.

1. *General observations.*

Proof of debts.

Every creditor must prove his debt (*s*).

Affidavit of proof.

Debts may be proved by an affidavit, verifying the debt, delivered or sent by post to the Official Receiver or to the liquidator, if one has been appointed (*t*). The affidavit may be made either by the creditor, or by some person authorised by him or on his behalf (*u*); it must contain or refer to a statement of account showing the particulars of the debt, and specifying the vouchers by which it can be sustained (*x*), and state whether the creditor is secured or unsecured (*y*); it may be sworn before any officer of the Board of Trade or any clerk of the Official Receiver authorised in writing by the Court or Board of Trade (*z*).

Bills of exchange, &c.

When a creditor seeks to prove in respect of any bill of exchange, promissory note, or other negotiable instrument or

(*rr*) The circumstances of the case rendered the Joint Stock Companies Arrangement Act, 1870, inapplicable.

(*s*) Rules, 1890, r. 96. Claims for wages to workmen and employés of the company, if numerous, may be included in one proof, see r. 106 and form 67. Under the former practice creditors were not obliged to prove their claims unless required to do so. See Rules, 1862, r. 21, and *Forwood's claim*, 5 Ch. 18.

(*t*) Rules, 1890, r. 97. When a liquidator is appointed, all proofs received by the Official Receiver must be handed over to the liquidator, ib. r. 109.

(*u*) Rules, 1890, r. 98. Probate in this country cannot be dispensed with where a claim is made by the legal personal representatives of a deceased creditor, *Fernandes' Exs. case*, 5 Ch. 314. And see *New York Breweries Co.* v. *Att.-Gen.* [1899], A. C. 62, affirming [1898], 1 Q. B. 205.

(*x*) Ib. r. 99. The Official Receiver or liquidator may at any time call for the vouchers. For general form of proof, see form 66.

(*y*) Ib. r. 100. As to secured creditors, see *infra*, pp. 1010 *et seq.*

(*z*) Rule of 3rd December, 1892.

security, the bill of exchange, note, instrument or security must, subject to any special order of the Court to the contrary, be produced to the Official Receiver, chairman of a meeting, or liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose (*a*).

Discounts.

The creditor must deduct from his debt all trade discounts (*b*).

Time for proof.

The Court is empowered to fix a time within which creditors are to prove their debts, or to be excluded from the benefit of any distribution made before such debts are proved (*c*). This power may be conferred by general Rules upon the liquidator, to be exercised by him as an officer of the Court and subject to its control (*d*); and under the Rules, it is his duty to give notice of his intention of declaring a dividend to any creditors mentioned in the statement of affairs who have not proved their debts, and to specify in such notice the latest date up to which proofs must be lodged (*e*). A proof intended to be used at the first meeting of the creditors, or at any adjournment thereof, must be lodged with the Official Receiver not later than the time mentioned in the notice convening the meeting or the adjourned meeting (*f*).

For use at first meetings.

Examination of proofs.

It is the duty of the liquidator to examine every proof and the grounds of the debt, and in writing to admit or reject it in

(*a*) Rules, 1890, r. 107.

(*b*) Ib. r. 101. The Rule contains an exception as to any discount not exceeding 5 per cent. which the creditor has agreed to allow for payment in cash. As to interest, see r. 104, and *infra*, p. 1008; as to proofs in respect of rent or other periodical payments, see r. 103, and *infra*, p. 1017; and for debts payable at a future time, r. 105, and *infra*, p. 1010.

(*c*) Comp. Act, 1862, § 107. *Kit Hill Tunnel*, 16 Ch. D. 590. If a liability contingent at the commencement of the winding up ripens into a debt before its termination, it may be proved, though the time fixed has passed. *Macfarlane's claim*, 17 Ch. D. 337.

(*d*) Act, 1890, § 13. The power has not been conferred upon the liquidator by any general Rules, except so far as it is conferred on him by r. 122.

(*e*) Rule, 1890, r. 122. The notice must be given not more than two months before the intention of declaring the dividend, and the date specified must not be less than 14 days from the date of the notice. Notice is also given to the Board of Trade and gazetted, ib.; and form 86 (4).

(*f*) Act, 1890, Sched. I., r. 6, and Rules, 1890, r. 108. See as to creditors' votes at such meetings, Act, 1890, Sched. I., rr. 6-10, and Rules, 1892, r. 25. Bills of exchange, &c., must be produced, Rules, 1890, r. 107, *supra*.

whole or in part, or require further evidence in support of it (*g*). Subject to the power of the Court to extend the time (*h*), the liquidator must do this within twenty-eight days of receiving a proof, and when he has given notice of an intention to declare a dividend, he must, within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, admit or reject every proof which has not been already dealt with (*i*). When examining the proof, he may, in order to arrive at the amount for which it is to be allowed, also examine a set-off to it, if the set-off is a matter of account (*j*). If he rejects the proof, he must state in writing to the creditor the grounds of rejection (*k*). Proofs which have been rejected or admitted must be filed (*l*).

Amendment.

A creditor may by leave amend his proof (*m*), even after he has voted in respect of it (*n*).

Powers of liquidator.

For the purpose of his duties in relation to proofs, the liquidator may administer oaths and take affidavits (*o*). A creditor may, it is conceived, be cross-examined on his

(*g*) Rules, 1890, r. 110. If the creditor refuses to produce the evidence he has, his claim may be disallowed, *Constantinople and Alexandru Hotel Co.*, 35 Beav. 349. As to the admission or rejection of proofs at the first meeting of creditors by the chairman of the meeting, see Act, 1890, Sched. I., r. 11; and *Canadian Pacific Colonisation Corp.*, W. N. 1891, p. 122. As to the former practice, see *Prichard's case*, 5 De G. M. & G. 495; and *Terrell* v. *Hutton*, 4 H. L. C. 1091. As to bringing actions to try a disputed debt, see *East of England Banking Company's case*, 5 De G. M. & G. 505, and 13 Beav. 426; *Ex parte Gwyn*, 1 Jur. N. S. 300; *Ex parte Higgins*, 2 ib. 178; and *Armstrong's case*, 3 De G. & S. 140. As to enabling a creditor to prosecute his claim *in formâ pauperis*, see *Ex parte Fry*, 1 Dr. & Sm. 318.

(*h*) Rules, 1890, r. 176.

(*i*) Ib. r. 120. Notice of his decision rejecting a proof wholly or in part must be given to the creditor. This rule does not apply to the Official Receiver: no time is limited in his case except when he has given notice of an intention to declare a dividend, as to which see Rules, 1892, r. 29, which is very similar to the latter half of r. 120.

(*j*) *National Wholemeal Bread, &c., Co.* [1892], 2 Ch. 457.

(*k*) Rules, 1890, r. 110.

(*l*) Rules, 1890, r. 117. See, too, as to filing lists of proof, ib., and as to filing all proofs tendered in the winding up before the payment of a dividend by the Official Receiver, r. 116.

(*m*) *Ex parte Cama*, 9 Ch. 686; *Ex parte Buenos Ayres, &c., Rail. Co.* [1901], 1 Q. B. 655, and as to secured creditors amending the valuation of their security, see Bank. Act, 1883, Sched. II., r. 13.

(*n*) *Ex parte Huddersfield Banking Co.* [1892], 2 Ch. 419, and *Ex parte Schofield*, 12 Ch. D. 337.

(*o*) Rules, 1890, r. 114.

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affidavit of proof (*p*), and in a proper case the Court will give leave to interrogate him (*q*).

Official Receiver.

Before a liquidator is appointed, the Official Receiver has all the powers of the liquidator in respect of the examination, admission, and rejection of proofs (*r*).

Expunging proofs.

If the liquidator thinks that a proof has been improperly admitted, the Court may, on the application of the liquidator after notice to the creditor who made the proof, expunge it or reduce its amount (*s*); the Court may also do this on the application of any creditor or contributory, if the liquidator refuses to interfere (*t*). Such an application may, it would seem, be made at any time; but if the proof is expunged, the creditor will be entitled to retain any dividend which he may have previously received (*u*).

Appeals from liquidator's decision as to proofs.

If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, he may appeal to the Court; but, subject to the power of the Court to extend the time (*x*), no application against a decision of the liquidator rejecting a proof can be entertained unless notice of the application is given before the expiration of twenty-one days from the date of rejection (*y*). If the appeal is brought after the date mentioned in a notice of intention to declare a dividend as the latest date up to which proofs may be lodged, notice of the application must be given within seven days from the notice of the decision rejecting the proof (*z*). Decisions of the Official Receiver (*a*), and of the chairman of the first meeting of creditors (*b*), in relation to proofs are subject to the like appeal.

(*p*) See R. S. C., Order XXXVII., r. 20, and *Ex parte Young*, 21 Ch. D. 642.

(*q*) *Alexandra Palace Co.*, 16 Ch. D. 58.

(*r*) Rules, 1890, r. 115; but see *ante*, notes (*i*) and (*l*). On the appointment of the liquidator, the Official Receiver must hand over to him all proofs he has received. Ib. r. 109.

(*s*) Rules, 1890, r. 112.

(*t*) Ib. r. 113.

(*u*) See *Ex parte Harper*, 21 Ch. D. 537, a decision in bankruptcy.

(*x*) Rules, 1890, r. 176.

(*y*) Act, 1890, § 24; Rules, 1890, r. 111. On receiving notice of an appeal against the rejection of a proof, the liquidator must file the proof with a memorandum of his disallowance.

(*z*) Rules, 1890, r. 122 (2).

(*a*) Rules, 1890, r. 115.

(*b*) Act, 1890, Sched. I., r. 11. *Canadian Pacific Colonisation Corp.*, W. N. 1891, p. 122.

The appeal, whether from the liquidator or from the Official Receiver acting as liquidator, should be brought by summons in chambers, when, if necessary, it will be adjourned into Court(*c*).

Costs of proof and of appeals from liquidator.

A creditor must bear the costs of proving his debt, unless the Court otherwise orders (*d*). If a creditor successfully appeals against the rejection of his proof by the liquidator, he will be allowed the costs of his appeal, but not of his proof, out of the assets (*e*). The Official Receiver is in no case personally liable for costs in relation to an appeal from his decision rejecting a proof (*f*). It seems that a creditor resident in Scotland or Ireland or abroad who brings in a claim (*g*), or appeals from a rejection of it by the liquidator (*h*), may be ordered to give security for costs, though such an order will only be made in extreme cases.

Security for costs.

Appeal by creditor from decision of judge.

If the judge acting in the winding up disallows a claim brought before him, the creditor may appeal from the decision (*i*); he can also, where necessary, apply for leave to take such proceedings as he may be advised, for the purpose of establishing his case by action (*k*); but it is now seldom if ever necessary to do this.

Appeal by liquidator.

On the other hand, if the liquidator or the contributories, or, it is presumed, the other creditors where they are prejudiced, are dissatisfied with the allowance of a debt by the judge they can appeal (*l*): but if the liquidator appeals, the contributories or other creditors are not usually heard with him (*m*).

The time for appeal is the same in this as in other cases (*n*).

Dividends.

The liquidator must give notice of his intention to declare

(*c*) *National Wholemeal Bread, &c., Co.* [1892], 2 Ch. 457.

(*d*) Rules, 1890, r. 101. See generally as to claims by creditors in respect of costs, *infra*, p. 1008.

(*e*) *National Wholemeal Bread, &c., Co.* [1892], 2 Ch. 457.

(*f*) Rules, 1890, r. 121. In ordinary cases he may be ordered to pay costs personally, see *Re W. Powell & Sons* [1896], 1 Ch. 681; *Hounslow Brewery Co.*, W. N. 1896, p. 45.

(*g*) *Fontaine's case*, 41 Ch. D. 119.

(*h*) *Ex parte Paget* [1894], 1 Q. B. 15; *Ex parte Izard*, 20 Q. B. D. 146, decisions in bankruptcy.

(*i*) *Ernest* v. *Nicholls*, 6 H. L. C. 401.

(*k*) As in *Armstrong's case*, 3 De G. & S. 140.

(*l*) In *Ex parte Gwyn*, 1 Jur. N. S. 300, a contributory appealed. As to the necessity of obtaining leave to appeal by a person not a party, see *Land Securities Insurance Co.* [1894], 2 Ch. 410.

(*m*) *Re Norwich Yarn Co.*, 13 Beav. 428, note, where, however, the contributories were heard. See, too, *Bodmin United Mines*, 23 Beav. 385.

(*n*) *Ante*, pp. 949, 950.

a dividend to the Board of Trade and to every creditor mentioned in the statement of affairs whose debt has not been proved (*o*). So soon as the time fixed for appealing from his decision rejecting a proof has elapsed (*p*), it is his duty to declare a dividend, and to give notice thereof to the Board of Trade, and to every creditor whose proof has been admitted (*q*). Every proof which has been rejected in respect of which no notice of appeal within the specified time has been given, is excluded from participation in the dividend (*r*). Provision must be made by the liquidator for dividends upon proofs which are the subject of a pending appeal, and for the costs of the appeal (*s*).

Unclaimed dividends.

Dividends which are unclaimed for six months must be paid into the Companies Liquidation Account (*t*).

Garnishee orders.

The sum payable to a creditor whose proof is admitted by the company is a debt due to him, and can, it seems, be attached in the hands of the liquidator under a garnishee order (*u*). Monies standing to the Companies Liquidation Account cannot be attached by a garnishee order (*x*).

Debts contracted by the liquidator.

Debts contracted by the liquidators in winding up the company must not be confounded with debts contracted by the company, and provable against it (*y*). Debts properly contracted by the liquidator are part of the expenses of the winding up, and are payable in full out of the assets of the company in priority to the other unsecured debts of the company (*z*).

(*o*) Rules, 1890, r. 122 (1), and forms 69, 70, 86 (4).

(*p*) As to this, see ib. r. 122 (2), and *ante*, p. 994.

(*q*) Ib. r. 122 (3), and forms 72 and 86 (5).

(*r*) Ib. r. 122 (2).

(*s*) Ib. r. 122 (2).

(*t*) Act, 1890, § 15; Rules, 1890, r. 127D, and *ante*, pp. 946 *et seq.* As to the payment out of monies standing to that account, see Rules, 1890, rr. 132 and 132A, and *ante*, p. 973.

(*u*) *Prichard's claim*, 2 De G. F. & J. 354. Compare *Cowan's estate*, 14 Ch. D. 638; *Re Hunter*, L. R. 8 C. P. 24; *Dawson* v. *Malley*, Ir. Rep. 1; Com. L. 207. Notice to the liquidator of an assignment of the debt is sufficient to perfect the assignment. *Wragge's case*, 5 Eq. 284.

(*x*) *Spence* v. *Coleman*, W. N. 1901, p. 97.

(*y*) See *Ex parte Clark*, 7 Eq. 550; *Ex parte Smith*, 3 Ch. 125, both of which were cases of set-off.

(*z*) See, as to distresses for rent and rates, *ante*, pp. 914 *et seq.* and 917 *et seq.*, and as to secured debts, *Ex parte Grissell*, 3 Ch. D. 411, and *infra*, § 15, under the head Costs.

2. *Debts provable.*

Debts provable.

Contingent debts and claims to damages.

The Companies Act, 1862, has for one of its primary objects the rateable payment *pari passu* of all creditors and others having claims against the company (*a*); and not only all debts actually payable, but all debts of the company payable on a contingency, and all claims against it, present or future, certain or contingent, ascertained or sounding only in damages, are admissible to proof against it (*b*), provided that the liability of the company was in existence at the commencement of the winding up, or arose subsequently by reason of an obligation previously incurred (*c*). The value of those debts or claims which are subject to any contingency, or sound only in damages, or which, for some other reason, do not bear a certain value, is to be estimated as justly as possible (*d*), according to the value thereof at the date of the winding-up order (*e*). But this last rule does not apply to cases of continuing damage (*f*), and has not been always regarded even in other cases, the date of the making of the claim having been preferred (*g*). A claim which is contingent at the commencement of the winding up may be proved for in the ordinary way if it ripens into a debt during the continuance of the winding up, whether the time limited for sending in claims has expired or not (*h*).

Priorities of debts.

The Companies Act, 1862, authorises liquidators to pay any creditors in full under certain special circumstances mentioned in the Act (*i*), but contains no provision to the effect that one

(*a*) *Ante*, p. 898, note (*s*).

(*b*) § 158; see, too, §§ 159, 160. See, as to remoteness of damage, *Johnston's claim*, 6 Ch. 212.

(*c*) Bank. Act, 1883, § 37. Jud. Act, 1875, § 10 (see *infra*, p. 1001). *British Gold Fields of West Africa* [1899], 2 Ch. 9; *Ex parte Graham*, 42 Ch. D. 349, 350.

(*d*) Comp. Act, 1862, § 158. The valuation of annuities and future and contingent liabilities is in the case of insolvent companies now governed by the rules in bankruptcy, Jud. Act, 1875, § 10, *infra*, p. 1001.

(*e*) See clause 1 in the general form for proof of debt, Rules, 1890, form 66. The date in the original form 66, for which the present form was substituted by the Rules, 1892, was the commencement of the winding up. Under the Rules, 1862 (r. 25), the date was, as now, the date of the order.

(*f*) *Cambrian Steam Packet Co.*, 4 Ch. 112, and 6 Eq. 396.

(*g*) See *Kellock's case*, 3 Ch. 769; *Craig's Executor's case*, 9 Eq. 706.

(*h*) *Macfarlane's claim*, 17 Ch. D. 337.

(*i*) § 159.

class of creditors is to be in any better position than any others. The general scheme of the Act is that all shall be paid out of the assets of the company *pari passu* (*k*). Thus a landlord has no priority for arrears of rent unless he is in a position to distrain (*l*), nor have persons paying money into a bank which stops immediately afterwards (*m*), or into the branch office of a bank in ignorance that the head office has already stopped (*n*); nor are policy holders whose policies are actually payable (*o*) in any better position as regards priority than other creditors.

This general rule, however, is subject to the right of the Crown to be paid in priority to other persons (*p*); and is also subject to the following statutory exceptions.

Preferential payments in Bankruptcy Act, 1888.

By the Preferential Payments in Bankruptcy Act, 1888 (*q*), which applies only to windings up commenced after the 31st December, 1888, priority is given to,

(*a*) All parochial or other local rates due from the company at the commencement of the winding up (*r*), and having become due and payable within twelve months next before that time (*s*), and all assessed taxes, land tax, property or income tax assessed on the company up to the fifth day of April next before the commencement of the winding up, and not exceeding in the whole one year's assessment;

(*k*) *Ante*, p. 898, note (*s*).

(*l*) *Thomas* v. *Patent Lionite Co.*, 17 Ch. D. 250; *Bridgewater Engineering Co.*, 12 Ch. D. 181; *Coal Consumers' Association*, 4 Ch. D. 625, and *ante*, pp. 914 *et seq.* as to distress.

(*m*) *Ex parte Waring*, W. N. 1866, p. 399.

(*n*) *Ex parte Guillemin*, 28 Ch. D. 634.

(*o*) *McIver's claim*, 5 Ch. 424. And where a company's contracts are reduced under a scheme in accordance with § 22 of the Life Assurance Companies Act, 1870, see *Great Britain Mutual Life Ass. Soc.*, 20 Ch. D. 351.

(*p*) *Henley & Co.*, 9 Ch. D. 469; *Oriental Bank Corporation, Ex parte The Crown*, 28 Ch. D. 643; and *West London Commercial Bank*, 38 Ch. D. 364. A surety to the Crown who has paid his principal's debt, is entitled to the Crown's priority, *Manisty* v. *Churchill*, 39 Ch. D. 174. As to Crown debts in Newfoundland, see *Fox* v. *Govt. of Newfoundland* [1898], A. C. 667.

(*q*) 51 & 52 Vict. c. 62; and as to Ireland, 52 & 53 Vict. c. 60. These Acts repealed the Companies Act, 1883, by which servants, clerks, and others were given a priority for salary and wages.

(*r*) Payments for water rates are not due until the water is supplied. Such rates will, if necessary, be apportioned, *Mannesmann Tube Co., Ld.* [1901], 2 Ch. 93.

(*s*) As to rates before this Act, see *ante*, p. 917.

(*b*) All wages or salary of any clerk or servant (*t*) in respect of services rendered to the company during four months (*u*) before the commencement of the winding up, not exceeding fifty pounds (*x*); and

(*c*) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece-work, in respect of services rendered to the company during two months before the commencement of the winding up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of a year in hiring, he shall have priority in respect of the whole of such sum, or a part thereof as the Court may decide to be due under the contract proportionate to the time of service up to the date of the commencement of the winding up.

The foregoing debts rank equally between themselves and are payable in full, unless the assets of the company are insufficient to meet them, in which case they must abate in equal proportions between themselves (*y*). Moreover, subject to the retention of such sums as may be necessary for the costs of administration or otherwise, the foregoing debts are payable at once, so far as the assets of the company are sufficient to meet them (*z*).

In the event of a distress on the company's goods within three months next before the date of the winding-up order, the above-mentioned debts are a first charge on the goods distrained on, or the proceeds of sale thereof (*a*); but the person distraining has the same right of priority in respect of any money paid under any such charge, as the person to whom such payment is made (*b*).

Preferential payments in Bankruptcy Amendment Act, 1897.

By the Preferential Payments in Bankruptcy Amendment Act, 1897 (*c*), which in cases of winding up applies only if the winding up commenced after the 15th July, 1897 (*d*), the

(*t*) This does not include a managing director, *Newspaper Proprietary Syndicate* [1900], 2 Ch. 349.

(*u*) *I.e.*, four months next before, see *Ex parte Fox*, 17 Q. B. D. 4.

(*x*) As to the old law, see *Chapman's case*, 1 Eq. 346; and *Association of Land Financiers*, 16 Ch. D. 373.

(*y*) 51 & 52 Vict. c. 62, § 2.

(*z*) Ib., § 3.

(*a*) Ib., § 4.

(*b*) As to distresses after the commencement of the winding up, see *ante*, pp. 94 *et seq.*

(*c*) 60 & 61 Vict. c. 19. This Act applies not only when a company is being wound up, but also whenever a receiver is appointed on behalf of debenture holders entitled to a general floating charge, see *ante*, pp. 338, 339.

(*d*) *Waverley Typewriter* [1898], 1 Ch. 699.

above-mentioned debts, so far as the assets of the company available for the payment of general creditors may be insufficient to meet them, have priority over the claims of the holders of debentures or debenture stock under any floating charge, and are to be paid out of any property subject to such charge. It is the duty of a receiver appointed on behalf of the holders of debentures or debenture stock containing such a charge to pay these debts at once, but any payments by him are to be recouped, so far as may be, out of the assets available for payment of the general creditors (*e*).

Stannaries Act, 1887.

Again by the Stannaries Act, 1887 (*f*), (which is not affected by the Preferential Payment in Bankruptcy Act (*g*)), miners are given a first charge for three months' wages upon the mining effects, and the money and other assets of the company in connection with the mine, having priority, subject to the provisions of the tenth section of the Act, over all claims by the lessors of the mine or by mortgagees or judgment execution or other creditors (*h*); and on the company being wound up these wages are to be paid by the liquidator forthwith in priority to all other costs, except the costs properly incurred of making the winding-up order, and, subject to the tenth section of the Act, to all claims by any person whatsoever; and the Court has power to charge the whole or any part of the assets of the company with a sum sufficient to pay these wages with interest at 5 per cent. per annum in favour of any person willing to advance the requisite amount or any part thereof (*i*). By section 10, the right conferred upon clerks and servants by the Companies Act, 1883, to be paid in the winding up of a company in priority to other creditors *pari passu* with labourers and workmen out of such assets only as are distributable by the liquidator is preserved, except that such priority is limited to three months' wages, and

(*e*) 60 & 61 Vict. c. 19, § 3, and *Mannesmann Tube Co., Ld.* [1901], 2 Ch. 93. The earlier Act did not apply to monies in the hands of a receiver for debenture holders, *Richards* v. *Overseers of Kidderminster* [1896], 2 Ch. 212.

(*f*) 50 & 51 Vict. c. 43, § 14.

(*g*) 51 & 52 Vict. c. 62, § 2 (2).

(*h*) See s. 4; for other advantages conferred on miners for their wages before the company is being wound up, see §§ 5-8.

(*i*) See § 9.

does not extend to the principal agent or manager, purser or secretary (*k*).

Workmen's Compensation Act, 1897.

If a company becomes liable under the Workmen's Compensation Act, 1897, to pay compensation in respect of an accident, and is entitled to any sum from insurers in respect of the amount due to a workman under such liability, the workman, in the event of the company having commenced to be wound up, has a first charge upon such sum for the amount due to him (*l*).

Judicature Act, 1875, § 10.

By the 10th section of the Judicature Act, 1875, it is enacted (*inter alia*) that—

"In the winding up of any company under the Companies Acts, 1862 and 1867 (*m*), whose assets may prove insufficient for the payment of its debts and liabilities and the costs of winding up (*n*), the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively as may be in force for the time being under the law of bankruptcy" (*o*).

This enactment has given rise to much discussion and to some conflict of judicial opinion, but it appears now to be settled that the bankruptcy rules which it has introduced into the winding up of insolvent companies, are confined to those relating to (1) the respective rights of secured and unsecured creditors, (2) to the debts and liabilities provable, and (3) to the valuation of annuities and future and contingent liabilities (*p*). The section does not affect the funds out of which debts are to be paid, nor the rules as to set-off in respect of calls (*q*); its effect on priorities will be discussed hereafter (*r*). The bankruptcy rules, which, under certain circumstances, deprive execution creditors of the fruits of their executions (*s*), allow the trustee in bankruptcy to

(*k*) 46 & 47 Vict. c. 28, § 4.

(*l*) 60 & 61 Vict. c. 37, § 5.

(*m*) The enactment does not apply to any winding up commenced before it came into operation, *Joseph Suche & Co.*, 1 Ch. D. 48.

(*n*) This must be assumed to be the case until the contrary is proved, *Ex parte Theys*, 25 Ch. D. 587.

(*o*) Notice the words are "as may be in force for the time being," *Mersey Steel and Iron Co.* v. *Naylor, Benzon & Co.*, 9 App. Ca. 434.

(*p*) As to what future and contingent liabilities may be valued, see *Hardy* v. *Fothergill*, 13 App. Ca. 351.

(*q*) *Auriferous Properties, Limited* [1898], 1 Ch. 691, and *infra*, p. 1030.

(*r*) See p. 1003.

(*s*) *Withernsea Brickworks*, 16 Ch. D. 340; *Richards & Co.*, 11 Ch. D.

disclaim onerous property (*t*), and the doctrines relating to reputed ownership (*u*), and fraudulent preferences (*x*) (except so far as introduced by the Companies Act, 1862, § 164), are not introduced into the winding up of companies.

Effect on secured creditors.

With regard to the respective rights of secured and unsecured creditors (*y*), it must be remembered that previously to the Judicature Act, 1875, by the rules in Chancery a secured creditor was allowed to prove in the winding up of an insolvent company, for the full amount of his debt and to realise his security afterwards (*z*). The abolition of this rule was one of the chief objects of the section, and by it the rights of secured and unsecured creditors in the winding up of insolvent companies are in this respect made the same as their rights in bankruptcy (*a*). But the rule in bankruptcy which prevents a fully secured creditor, who retains his security, from presenting a petition in bankruptcy, does not prevent a secured creditor from presenting a petition for a winding-up order (*b*).

As to debts provable.

With respect to the bankruptcy rules relating to "debts and liabilities provable," there are decisions to the effect that the rules intended to be introduced by this clause, are the rules which determine what debts or liabilities may be proved in bankruptcy and these rules only (*c*). That these rules are

676; *Railway Steel and Plant Co.*, 8 Ch. D. 183. *Printing and Numerical Registering Co.*, 8 Ch. D. 535, is overruled, *ante*, p. 914.

(*t*) *Westbourne Grove Drapery Co.*, 5 Ch. D. 248.

(*u*) *Gorringe* v. *Irwell Rubber Works*, 34 Ch. D. 128; *Crumlin Viaduct Works Co.*, 11 Ch. D. 755.

(*x*) See *Withernsea Brickworks*, 16 Ch. D. 340; *Winehouse* v. *Winehouse*, 20 Ch. D. 545, and *ante*, pp. 901, 902.

(*y*) The class of secured creditors must be determined by the creditor's position at the commencement of the winding up, and by the definition of "secured creditors," contained in the Bankruptcy Act. See § 168 of the Bankruptcy Act, 1883, *Thomas* v. *Patent Lionite Co.*, 17 Ch. D. 250; *Coal Consumers' Association*, 4 Ch. D. 625. See, also, *Printing and Numerical Co.*, 8 Ch. D. 535.

(*z*) *Mason* v. *Bogg*, 2 My. & Cr. 443; *Kellock's case*, 3 Ch. 769.

(*a*) *Winehouse* v. *Winehouse*, 20 Ch. D. 545; *Williams* v. *Hopkins*, 18 Ch. D. 370; *Withernsea Brickworks*, 16 Ch. D. 337; *Kit Hill Tunnel*, ib. 590; *Lee* v. *Nuttall*, 12 Ch. D. 61; *Coal Consumers' Association*, 4 Ch. D. 625; *Joseph Suche & Co.*, 1 Ch. D. 48.

(*b*) *Moor* v. *Anglo-Italian Bank*, 10 Ch. D. 681.

(*c*) *West of England Bank, Ex parte Brown*, 12 Ch. D. 823; *Albion Steel Wire Co.*, 7 Ch. D. 547.

introduced is well settled (*d*), but according to the more recent decisions to confine the effect of the clause to the introduction of these rules only is to put too narrow a construction upon it (*e*).

It has been held that the rule in bankruptcy which allows any liability contingent at the date of adjudication to be proved if it ripens into a debt during the bankruptcy, is introduced *mutatis mutandis* into the winding up of insolvent companies (*f*); and that the bankruptcy rules as to interest (*g*), and as to set-off between the company and non-contributories, are also introduced (*h*).

Effect on priorities.

It has recently been decided by the Court of Appeal that the rules in bankruptcy as to the relative priorities of provable debts have been introduced into the winding up of companies (*i*). This decision is in conflict with a considerable number of earlier decisions (*k*), but has, it is apprehended, left untouched the authority of those cases which decided that a landlord is not entitled to any priority in respect of six months' arrear of rent (*l*), and that the Crown has not been

(*d*) See *British Goldfields of West Africa* [1899], 2 Ch. 7, and Bank. Act, 1883, § 37.

(*e*) *Re Whitaker, Whitaker* v. *Palmer* [1901], 1 Ch. 9, affirming ib. [1900], 2 Ch. 676. See, too, *Re Leng, Tarn* v. *Emmerson* [1895], 1 Ch. 652.

(*f*) *Macfarlane's claim*, 17 Ch. D. 336. This is irrespective of the question whether such a debt is or is not provable under § 158 of the Companies Act, 1862; and see *Hill* v. *Bridges*, 17 Ch. D. 342, an administration case.

(*g*) *Boswell* v. *Gurney*, 13 Ch. D. 136, and see *infra*, pp. 1008 *et seq.*

(*h*) See *infra*, p. 1025, as to set-off.

(*i*) *Re Whitaker, Whitaker* v. *Palmer* [1901], 1 Ch. 9. The decision was that the rule in bankruptcy which puts voluntary creditors in the same position as creditors for value applies in the administration of an insolvent estate, but as an authority on the construction of Judicature Act, 1875, § 10, it appears to be equally applicable to the winding up of companies. See, too, *Re Leng, Tarn* v. *Emmerson* [1895], 1 Ch. 652, and *Association of Land Financiers*, 16 Ch. D. 373, where Malins, V.-C., allowed priority to servants' wages.

(*k*) See the decisions allowing the priority of judgment creditors in administration suits, *Winehouse* v. *Winehouse*, 20 Ch. D. 545; *Smith* v. *Morgan*, 5 C. P. D. 337, and of a savings bank in respect of monies due from its officers under the Savings Bank Act, 1863, *Jones* v. *Williams*, 36 Ch. D. 573, and denying priority to local rates in the winding up of companies, *Albion Steel Wire Co.*, 7 Ch. D. 547.

(*l*) *Thomas* v. *Patent Lionite Co.*, 17 Ch. D. 250; *Bridgewater Engineering Co.*, 12 Ch. D. 181; *Coal Consumers' Assoc.*, 4 Ch. D. 625.

deprived of its right to issue process for the recovery of a debt due to it (*m*). It is also apprehended that the decision (*n*) that a creditor, who is a shareholder and has paid all calls made upon him, has not been deprived of his right to prove for his debt *pari passu* with any other creditor, may still be relied upon, at all events as to incorporated companies (*o*), though some of the *dicta* in the judgment cannot now be supported.

What debts, &c., are provable.

Passing now to the general question, what debts are provable and what not, the guiding principle is that those claims only are provable on the winding up of a company which are or will become enforceable against the company which is being wound up. So long as an order exists for winding up a company the Court cannot hold that there is no company against which debts can be proved (*p*). Demands against the promoters or directors, or other persons, but not against the company itself, cannot be proved against it either as a debt (*q*) or a claim (*r*). On the other hand, debts of the company can be proved against it although some of the shareholders may be entitled to an indemnity in respect of them from other shareholders (*s*).

The governing enactment in the case of insolvent companies

The landlord's priority in bankruptcy depends on his right of distress under Bank. Act, 1883, § 42, amended by Bank. Act, 1890, § 28. *Stockton Iron Furnaces Co.*, 10 Ch. D. 335, so far as it is an authority to the contrary, must be considered as overruled.

(*m*) *Ante*, p. 998, note (*p*). *Semble*, the cases which allowed an executor of an insolvent estate to retain a debt due to him, *Lee* v. *Nutall*, 12 Ch. D. 61, and *Crawford* v. *May*, 45 Ch. D. 499, are still law.

(*n*) *West of England Bank, Ex parte Brown*, 12 Ch. D. 823. See, too, *Ex parte Welton* [1899], 1 Ch. 108, and *infra*, p. 1022. The debt must not be a debt due to him in his character of member, see § 38, sub-s. 7 of the Companies Act, 1862.

(*o*) *Semble*, the rules in bankruptcy which prevent a member of a firm from proving in competition with the creditors of the firm do not apply to such a case, for the creditors of an incorporated company are not the creditors of the individual contributories.

(*p*) *Arthur Average Assoc.*, 3 Ch. D. 522; *Ex parte Hargrove*, 10 Ch. 542.

(*q*) *London Marine Ins. Assoc.*, 8 Eq. 176; *Ex parte Lloyd*, 1 Sim. N. S. 248, as explained in 2 De G. M. & G. 640.

(*r*) See *Wryghte's case*, 2 De G. M. & G. 636, and *Prichard's case*, 4 De G. & S. 328, and 5 De G. M. & G. 484. See, too, *Ex parte Briggs*, 8 W. R. 110.

(*s*) *Shaw's claim*, 10 Ch. 177.

Bank. Act, 1883, § 37.

is now § 37 of the Bankruptcy Act, 1883 (*t*). Under that section demands in the nature of unliquidated damages arising otherwise than by reason of a contract, promise, or breach of trust are not provable; but, with the exception of these demands, and of debts and liabilities contracted by the debtor with persons having notice of an act of bankruptcy available against him, all debts and liabilities, present or future, certain or contingent, to which the debtor is subject at the date of the receiving order, or to which he may become subject before his discharge by reason of any obligation incurred before the date of the receiving order, are provable. For the purposes of that Act, liability includes any compensation for work or labour done, any obligation or possibility of an obligation to pay money or money's worth on the breach of any express or implied covenant, contract, agreement, or undertaking, whether the breach does, or does not occur, or is, or is not likely to occur or capable of occurring before the discharge of the debtor, and generally it includes any express or implied engagement, agreement, or undertaking to pay, or capable of resulting in the payment of money or money's worth, whether the payment is, as respects amount, fixed or unliquidated; as respects time, present or future, certain or dependent on any one contingency or on two or more contingencies; as to mode of valuation, capable of being ascertained by fixed rules, or as matter of opinion (*u*).

What is, and what is not, a debt or liability of the company, must be determined upon the principles discussed in an earlier portion of the present treatise (*w*); and in this place it is proposed merely to notice some general points of practical importance, and continually arising in the winding up of companies.

A debt may be proved in the winding up, although an action has been previously brought against the company to recover it, and such action has been dismissed for want of prosecution (*x*); but except in the case of a judgment against a company on a contract, which is, *ultra vires*, obtained by consent in proceed-

(*t*) See Jud. Act, 1875, § 10, *ante*, p. 1001, *British Goldfields of West Africa* [1899], 2 Ch. 7, and compare Comp. Act, 1862, § 158.

(*u*) Bank. Act, 1883, § 37 (1), (2), (3) and (8).

(*w*) See Bk. II.

(*x*) *Orrell Colliery and Fire Brick Co.*, 12 Ch. D. 681.

ings in which the question of *ultra vires* was not raised (*y*), a judgment by consent or by default is as effective to raise an estoppel as a judgment founded on a decision of the Court (*z*).

Equitable debts.

Equitable debts are clearly provable (*a*); but a debt contracted under seal by a trustee for the company is not provable against the company (*b*); nor are claims founded on agreements fraudulently concealed from the members, even though payment is stipulated for in the articles of association (*c*). Nor can monies subject to a fraudulent trust be treated as trust monies and be paid as such (*d*).

Debts contracted *ultra vires*.

Nor are claims, founded on contracts which are *ultra vires*, provable against the company (*e*). Moreover, solicitors who, on behalf of the company, conduct legal proceedings arising out of transactions which are *ultra vires*, and are known by them to be so, are not entitled to be paid for their services by the company (*f*). Nor can brokers claim in respect of purchases of shares in the company being wound up unless the company has power to buy its own shares (*g*). But money borrowed *ultra vires*, but proved to have been expended in paying debts for which the company was liable, or for other legitimate purposes of the company, is provable as a debt against it (*h*). In connection with this subject, it should be remembered that creditors may be able to dispute claims which would be binding on the company by the law of estoppel (*i*).

Debts bought up for less than their amount.

A debt of the company bought up for less than its full amount can be proved for the full amount even by a member (*k*); but a director who knows that a debt has been

(*y*) *Gt. North-West. Central Ry. Co.* v. *Charlebois* [1899], A. C. 114.

(*z*) *Ex parte Bank of England* [1895], 1 Ch. 37.

(*a*) See *Terrell* v. *Hutton*, 4 H. L. C. 1091.

(*b*) *Pickering's claim*, 6 Ch 525.

(*c*) *Ex parte Williams*, 2 Eq. 216, where the articles of association were vitiated by a concealed agreement. See, also, *Hereford and South Wales Waggon Co.*, 2 Ch. D. 621.

(*d*) *Great Berlin Steamboat Co.*, 26 Ch. D. 616.

(*e*) *Ante*, p. 214.

(*f*) *Howard and Dollman's case*, 1 Hem. & M. 433.

(*g*) *Zulueta's claim*, 5 Ch. 444, reversing S. C., 9 Eq. 270. See *ante*, p 254.

(*h*) *Ante*, pp. 292 *et seq.*, *Cork and Youghal Rail. Co.*, 4 Ch. 748.

(*i*) *Mowatt* v. *Castle Steel and Iron Works Co.*, 34 Ch. D. 58, and see per Vaughan Williams, L.J., in *Ex parte Bank of England* [1895], 1 Ch. p. 45.

(*k*) *Humber Iron Works Co.*, 8 Eq. 122. See, too, as to debenture holders proving against property

improperly contracted on behalf of the company, cannot buy it up cheap and make a profit, by proving for its full amount against the company (*l*).

Statutes of Limitations.

Debts barred by the Statute of Limitations at the date of the winding-up order cannot be proved (*m*). But debts not then barred are provable, although no claim be made in respect of them until after the expiration of the time which but for the winding-up order would have barred them (*n*). A creditor, however, who neglects to carry in his claim for an unreasonable time will not be allowed to disturb dividends already paid (*o*); and he will entirely lose his right to prove if all the assets have been distributed and the affairs of the company practically wound up before he has brought in his claim (*p*). Thus where a solicitor's bill has been taxed, and ordered to be paid out of the first funds of the company which should come to the hands of the liquidator, and the solicitor took no steps to obtain payment for more than six years, and in the meantime the affairs of the company were settled by compromise, it was held that the solicitor was not entitled to have a call made for his payment (*q*). Again, in *Ex parte Forest* (*r*), a debt was due from a company ordered to be wound up. No claim was made by the creditor until more than nine years had elapsed since the debt became due and the winding-up order was made; nor until all the other debts of the company had been paid and the surplus assets had been distributed amongst the shareholders. The debt was held to be barred by the laches of the creditor, and by the Statute of

Laches in carrying in claim.

Ex parte Forest.

comprised in their security for the nominal value of debentures held as security for a debt of smaller amount, *Regents Canal Ironworks Co.*, 3 Ch. D. 43; *Robinson* v. *Montgomeryshire Brewery Co.* [1896], 2 Ch. 841, and *ante*, pp. 327, 328.

(*l*) *Ex parte Larking*, 4 Ch. D. 566.

(*m*) *Mitchell's claim*, 6 Ch. 822.

(*n*) *Joint Stock Discount Co.'s claim*, 7 Ch. 646; *Wryghte's case*, 5 De G. & Sm. 244; and see *Ex parte Higgins*, 2 Jur. N. S. 178; *Warwick and Worcester Rail. Co.*, 27 L. J. Ch. 735; *Gloucester, Aberystwith, &c., Rail. Co.*, 2 Giff. 47.

(*o*) See the last note, and *Kit Hill Tunnel*, 16 Ch. D. 590.

(*p*) See, too, *Craig's claim* [1895], 1 Ch. 267, where a claim to have assets set aside to meet a contingent liability failed on this ground.

(*q*) *Ex parte A'Beckett*, 2 Jur. N. S. 684. Compare *Gloucester, Aberystwith, &c., Rail. Co.*, 2 Giff. 47.

(*r*) 2 Giff. 42.

Bk. IV. Chap. 1. Sect. 12.

Limitations. As regards the statute, the decision cannot now be relied upon; but as regards the effect of laches, coupled with an alteration in the position of others which would render a proof unjust to them, the case may, it is conceived, be still considered sound (*s*).

Proofs for costs of litigation.

With regard to proofs in respect of the costs of litigation commenced before a winding up (*t*), it has been held (*u*) that the following rules, based on the decisions in bankruptcy, apply, viz.: 1. As to actions to recover money brought against a company which subsequently goes into liquidation.—If the action is successful, the costs are considered as an addition to the sum recovered; if that sum is provable, the costs of recovering it are provable (*x*); if that sum is not provable, neither are the costs of recovering it (*y*); if the action is unsuccessful, no question arises. 2. As to actions brought by a company which subsequently goes into liquidation.—If the company is ordered to pay costs or a verdict is given against it before it goes into liquidation, the costs are provable (*z*); if no verdict is given or no order is made until after it goes into liquidation, the costs are not provable (*a*).

Solicitor's bills.

A claim by a solicitor for costs is subject to taxation (*b*); but if at the date of the winding up the company could not have taxed the bill, it is not taxable at the instance of the liquidators (*c*); but if it is then taxable, the liquidator can have it taxed even after the lapse of twelve months from the delivery of the bill (*d*). The bill, however, may be allowed as a debt subject to taxation (*e*).

Interest.

By the Companies Winding-up Rules, 1890 (*f*), a creditor

(*s*) See *Joint Stock Discount Co.'s claim*, 7 Ch. 646, where no injustice was done to any one in admitting the claim.

(*t*) As to costs incurred in the winding up, see *infra*, § 15.

(*u*) *British Goldfields of West Africa* [1899], 2 Ch. 7.

(*x*) Ib.; where costs of a successful application to rectify the register and for a return of the money paid for shares were admitted to proof; and *Emma Silver Mining Co.* v. *Grant*, 3 Ch. D. 494.

(*y*) *Re Newman*, 3 Ch. D. 494; *Re Bluck*, 57 L. T. N. S. 419.

(*z*) *Ex parte Peacock*, 8 Ch. 682.

(*a*) *Vint* v. *Hudspith*, 30 Ch. D. 24.

(*b*) *Ex parte Quilter*, 4 De G. & S. 183.

(*c*) *Ex parte Quilter*, 4 De G. & S. 183.

(*d*) *Ex parte Evans*, 11 Eq. 151.

(*e*) *Terrell* v. *Hutton*, 4 H. L. C. 1091.

(*f*) Rule 104. The Act is silent

Interest.

is allowed to prove for interest on any debt or sum certain payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order, at a rate not exceeding 4 per cent. per annum to the date of the commencement of the winding up from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving notice that interest will be claimed from the date of the demand until payment. This rule is substituted for the former rule which allowed interest on all debts (*g*). But the validity of that rule was very questionable (*h*), and notwithstanding the former rule, interest on a debt not bearing interest could not be allowed at all (*i*), unless the debt was one in respect of which interest in the shape of damages could be given by a jury under 3 & 4 Wm. 4, c. 42 (*k*). The present rule seems free from objection, as under the circumstances mentioned in it a jury could give the interest as damages. Even if a debt bears interest, the interest stops at the commencement of the winding up if the company is insolvent (*l*). And if a creditor, whose debt carries interest at a higher rate than 4 per cent., obtains a judgment for his principal and interest, he will only be allowed to prove for his judgment debt and interest on it at the rate of 4 per cent., for

on the subject of interest. See 3 & 4 Wm. 4, c. 42, §§ 28, 29; 1 & 2 Vict. c. 110, § 17, 18; *Dornford* v. *Dornford*, 12 Ves. 129; *Mildmay* v. *Methuen*, 3 Drew. 91.

(*g*) Rules, 1862, r. 26; but unless the debt carried interest, interest was only payable out of assets remaining after payment of debts, and the interest on debts carrying interest.

(*h*) In truth i seems to have been *ultra vires*, see the next note.

(*i*) *Ex parte Greenwood*, 9 Jur. N. S. 997. *East Holyford Mining Co.*, Ir. Rep. 9 Eq. 327; *East of England Banking Co.*, 4 Ch. 14; and *Herefordshire Banking Co.*, 4 Eq. 250.

(*k*) See *Ex parte Welton* [1899], 1 Ch. p. 114, and *State Fire Insurance Co., Times Assurance Co.'s case*, 2 Hem. & M. 722. In this case the company was being wound up under the Act of 1848, but the reasoning applies to companies which are being wound up under the Act of 1862. Compare *Sargood's claim*, 15 Eq. 43, where a surety, who paid off a debt bearing interest at 4 per cent., was allowed to prove for the principal and interest at 5 per cent.

(*l*) See Jud. Act, 1875, § 10, *ante*, pp. 1001 *et seq.* *Warrant Finance Co.*, 4 Ch. 643; *Ebbw Vale Co.'s case*, 5 Ch. 112; *Ex parte Colborne and Strawbridge*, 11 Eq. 478; *Hughes' claim*, 13 Eq. 623, the case of a surety.

the original debt will have merged in the judgment (*m*). If the debt carries interest at a rate exceeding 5 per cent., 5 per cent. only is allowed for purposes of dividend (*n*). If the debt is payable by two companies, the creditor can prove against each for the principal and interest up to the date of its winding up, and can receive dividends from each until each has paid twenty shillings in the pound on the debt proved against it, or until both companies together have paid the whole principal and interest up to the date of payment (*o*). A dividend paid in respect of principal and interest is first to be attributed to the interest and then to the principal (*p*).

Rebate in respect of debts not due.

If the debt is not payable when the winding-up order is made, the creditor may prove for it as if it were immediately payable, subject to a rebate of interest at the rate of 5 per cent. from the date of the winding up to the time when the debt would have become payable according to the terms on which it was contracted (*q*). If such a debt carries interest in the meantime, the proper course is to prove the principal sum as a present debt, deducting the rebate, and then to value the liability to pay interest and prove for that value without any rebate. If the rate of interest contracted for is 5 per cent., the proper course is simply to prove for the principal sum as a present debt, without rebate (*r*).

Position of secured creditors.

Secured creditors cannot prove for their debts without giving up, or valuing and deducting the value of, their securities on the property of the company (*s*). But they need not give up or value other securities (*t*).

Although interest accruing after the commencement of the

(*m*) *Ex parte Oriental Financial Corporation*, 4 Ch. D. 33; *Ex parte Hughes*, ib. 34 n.; *Ex parte Fewings*, 25 Ch. D. 338.

(*n*) See Bank. Act, 1890, § 23. He may receive a higher rate after all creditors have been paid in full.

(*o*) *Warrant Finance Co.*, 5 Ch. 86.

(*p*) *Warrant Finance Co.* (No. 2), 10 Eq. 11.

(*q*) Rules, 1890, r. 105. Debenture holders realising their security before the principal is due need not make any such deduction as against their security, see *Wallace* v. *Universal Automatic, &c., Co.* [1894], 2 Ch. 547, and *ante*, p. 336.

(*r*) *Ex parte Ador* [1891], 2 Q. B. 574, a decision under the rule in bankruptcy which is somewhat differently worded.

(*s*) Jud. Act, 1875, § 10, *ante*, pp. 1001 *et seq.* Bank. Act, 1883, Sched. II., rr. 9-16, and Comp. Winding-up Act, 1890, Sched. I., rr. 8-10.

(*t*) See Partn. pp. 726 *et seq.*, where the rules in bankruptcy are referred to.

winding up is not provable against an insolvent company (*u*), yet a creditor who holds a security for principal and interest can only be redeemed on being paid principal and interest in full up to the time of payment and his costs (*x*). But if he has realised his security, and the proceeds are insufficient to satisfy his debt, he is not entitled to apply such proceeds first in payment of interest subsequent to the commencement of the winding up, and then in reduction of the principal, and to prove for the balance; his proof must be limited to what was due for principal and interest at the commencement of the winding up and his costs, after deducting therefrom the proceeds of the realisation. He is, however, entitled to set off the income received by him from his security since the commencement of the winding up against such subsequent interest (*y*). If his debt carries interest at a higher rate than 5 per cent., he can appropriate the proceeds in payment of such higher rate up to the commencement of the winding up (*z*). A creditor who holds two securities of the same company for one debt can only prove for that debt; he cannot prove in respect of each security (*a*).

Interest on secured debts.

The rights and position of debenture holders as secured creditors have been already considered (*b*).

Debenture holders.

Whether a mortgage is binding on the company, and the extent of the assets covered by it, depends not only on its terms but also on the nature of the company and on the powers of its directors (*c*). A security of a limited company not registered as required by § 43 of the Companies Act, 1862, is nevertheless provable as a secured debt as against other creditors, even although given to the directors or solicitors of the

Validity of mortgages.

Unregistered securities.

(*u*) *Ante*, p. 1009.

(*x*) *Warrant Finance Co.* (No. 2), 10 Eq. 11.

(*y*) *Quatermaine's case* [1892], 1 Ch. 639, and form of Order, p. 650. *Ex parte Penfold*, 4 De G. & Sm. 282, and order therein [1892], 1 Ch. p. 647; *Re Savin*, 7 Ch. 760; *Re Talbott, King* v. *Chick*, 39 Ch. D. 567, must be considered as overruled.

(*z*) *Ex parte Discount Banking Co. of England and Wales* [1894], 1 Q. B. 438. *Sed qu.*: the cases in last note were not referred to, and see [1894], 1 Q. B. p. 442.

(*a*) In *Metropolitan and Provincial Bank*, W. N. 1869, p. 148, the creditor had a bill and a bond; and see *Ex parte European Bank*, 7 Ch. 99.

(*b*) See *ante*, pp. 340 *et seq.*

(*c*) See *ante*, pp. 284 *et seq.*, and 298.

company (*d*); but securities which have not been registered, as required by § 14 of the Companies Act, 1900, are void as against the liquidator and creditors; but if the company is under any obligation to repay the money so secured, it can be proved for as an unsecured debt (*e*).

Bankers.

A bank, with which a company had deposited its deeds as a security for bills under discount, was held entitled to apply the proceeds of the sale of its security, not only to meet bills under discount, but all other monies due to it from the company (*f*).

Vendor's lien for unpaid purchase-money.

The ordinary lien which a vendor of land has for his unpaid purchase-money (*g*), the right of an unpaid vendor of goods to stop them *in transitu* in the event of the insolvency of the buyer, and maritime liens (*h*), are all available against companies which are being wound up (*i*).

Rule in Ex parte Waring.

The rule in *Ex parte Waring* (*k*), by which, if both the drawer and acceptor of a bill of exchange become bankrupt, the holder of the bill is entitled to have any securities held by the acceptor for the bill applied in taking it up, applies where the drawer and acceptor are companies in liquidation, at all events if they are insolvent; but, it has been said, not otherwise (*l*). The rule, however, has no application unless there is a double forced liquidation (*m*). Whilst the drawer and acceptor are solvent they can deal with the

(*d*) *Wright* v. *Horton*, 12 App. Ca. 371. See *ante*, p. 311.

(*e*) Non-registration only avoids the security, see § 14 (1), and *ante*, pp. 311, 312.

(*f*) *Ex parte National Bank*, 14 Eq. 507. See, also, *Agra Bank's claim*, 8 Ch. 41.

(*g*) See, as to the lien of a vendor who sells for cash and shares, and the company becomes wholly abortive, *Brentwood Brick and Coal Co.*, 4 Ch. D. 562. The vendor not being a creditor at law until a conveyance has been executed, never was entitled in equity to prove for the whole purchase-money, and to retain his security. See *Rome* v. *Young*, 3 Y. & C. Ex. 199, and 4 ib. 204.

(*h*) *Australian Steam Nav. Co.*, 20 Eq. 325; *Rio Grande do Sul Steam Ship Co.*, 5 Ch. D. 282. As to the extent of such liens, see now 57 & 58 Vict. c. 60, § 167. The statute has altered the law as settled in *Hamilton* v. *Baker*, 14 App. Cas. 209.

(*i*) See, as to the lien of a vendor of a patent, *Gore and Durant's case*, 2 Eq. 349.

(*k*) 19 Vesey, 345. For a fuller account of this rule, see Partn. p. 729, and Eddis on *Ex parte Waring*.

(*l*) *Hickie & Co.'s case*, 4 Eq. 226, *sed qu.*, see *Powles* v. *Hargreaves*, 3 De G. M. & G. 430; *Ex parte Alliance Bank*, 4 Ch. 423; *Bank of Ireland* v. *Perry*, L. R. 7 Ex. 14.

(*m*) The rule does not apply when one of the parties, though insolvent, remains master of his own property *Ex parte General South American Co.*, 10 Ch. 635.

securities as they please, and release them altogether (*n*); and the transferee of the bill acquires no right to have securities pledged to meet it applied in taking it up, unless that right has been conferred upon him by some special contract with himself or its equivalent (*o*); and where the security consists of a guarantee, the bill-holder acquires no rights as against the guarantor or his estate, even although all parties are insolvent (*p*).

Trustees for the company.

A person who holds shares as a trustee for a company being wound up is entitled to prove against it, not only for calls already made on him, but also in respect of his liability to future calls (*q*); and his proof is not to be rejected simply because he may be indebted to the company on another account (*r*).

Indemnity.

So other claims against the company for indemnity by it can be proved against it, *e.g.*, a claim by a surety for the company (*s*), before the surety has paid (*t*); or a claim by a co-surety of the company for contribution before the claimant has paid (*u*), or a claim arising from an undertaking by the company to pay a bill accepted by the claimant, and not due at the commencement of the winding up (*x*). But as in bankruptcy so in winding up companies, the same debt cannot be proved twice over; and if in the last case the holder of the bill has proved, the acceptor cannot prove also without giving credit for the dividend received by the holder.

(*n*) *Ex parte Lambton*, 10 Ch. 405.

(*o*) Compare *Inman* v. *Clare*, Johns. 769, and *Agra and Masterman's Bank*, 2 Ch. 391, where he had acquired the right, with *Ex parte Stephens*, 3 Ch. 753, and *Banner* v. *Johnston*, L. R. 5 H. L. 157, where he had not.

(*p*) *Ex parte Stephens*, 3 Ch. 753.

(*q*) *Ex parte Oriental Commercial Bank*, 3 Ch. 791.

(*r*) Ib.

(*s*) See, as to sureties, *Hughes' claim*, 13 Eq. 623.

(*t*) *Ex parte Western Insurance Co.* [1892], 2 Ch. 423. As to a surety's right to the benefit of securities before he has paid, see *Dixon* v. *Steel* [1901], 2 Ch. 602.

(*u*) *Wolmershausen* v. *Gullick* [1893], 2 Ch. 514.

(*x*) *Oriental Commercial Bank*, 7 Ch. 99, reversing 12 Eq. 501. See, further, as to the rights of sureties for a part only of the debt, or for a limited amount less than the whole, when sued by the creditor to share dividends received by him on a proof for the whole debt, *Gray* v. *Seckham*, 7 Ch. 680; *Ellis* v. *Emmanuel*, L. R. 1 Ex. D. 157. The creditor may prove for the whole debt though the surety

Winding up no breach of contract.

Although future claims, and claims for unliquidated damages for breach of contract are provable against the company, a company neither rescinds its contracts, nor is necessarily guilty of a breach of contract, by being wound up. Hence current engagements to accept bills, supply goods, &c., are not broken by a winding-up order; and no claim for damages can be allowed, on the theory that the winding up was *per se* a breach of contract, if the liquidators are ready to perform the contract. But if they are not the case will be otherwise. The point to determine is whether what has taken place renders performance by the company of its contract impossible, or amounts to a refusal by the company to perform it.

Mersey Steel and Iron Company *v.* Naylor & Company.

The principles applicable to this subject were much discussed in *The Mersey Steel and Iron Co.* v. *Naylor, Benzon & Co.* (*y*). There a company had agreed to sell 5000 tons of steel, and to deliver them by instalments of 1000 tons per month. The company delivered some of the steel, and a petition to wind it up was then presented. The buyer refused to pay for the steel delivered without the sanction of the Court (*z*), and the company treated his refusal to pay as a breach of his contract and as exonerating the company from further deliveries. A winding-up order was then made, and the company brought an action for the price of the steel delivered, and the buyer counterclaimed for damages for non-delivery of the rest of the steel. It was held (1) that the company was entitled to be paid for the steel delivered; (2) that the buyer was entitled to damages for non-delivery of the rest of the steel; (3) that these damages could be set off against the price. The breach of contract which rendered the company liable in this case was the refusal to make further deliveries of steel, not the winding up of the company.

So an order to wind up a company under supervision was held to afford no defence to an action by the company for the breach of an agreement which the liquidators had performed

has paid the amount he guaranteed, *Re Sass* [1896], 2 Q. B. 12.

(*y*) 9 App. Ca. 434, and 9 Q. B. D. 648.

(*z*) This was held not to be an absolute refusal to perform the contract so as to entitle the company to treat it as rescinded.

and were ready to continue to perform (*a*). So where a bank had agreed to accept bills against bills of lading, and the bank was ordered to be wound up, and the liquidators were ready to carry out the agreement, a claim for damages for its breach was disallowed (*b*); and sureties for the bank were held not discharged (*c*).

Placing shares.

On the other hand, as the winding up of a company renders it impossible to place shares in it, a person who has agreed with the company to place them is entitled to damages for the loss which the winding up has caused him (*d*).

Dismissal of servants. Ex parte Harding.

Similar principles were applied by V.-C. Wood to the dismissal of servants in *Ex parte Harding* (*e*). There a clerk to a company was engaged on the terms that he should not be dismissed without three months' notice. The company was ordered to be wound up; but its business was continued by the liquidator for a time, and the clerk was not dismissed, but he continued in his employment. He was then discharged by the liquidator without notice. The Court decided that the winding-up order did not operate as a discharge of the clerk, and that he was entitled to his salary up to the time of his dismissal and the damages in lieu of notice (*f*).

Discharge of servants by winding-up order.

But on grounds of convenience it has been held in other cases that a compulsory winding-up order operates as a discharge of the company's servants, and entitles them to damages as for wrongful dismissal on that day, even if they are not in fact dismissed but assist the liquidator in winding up the company.

The general doctrine that a compulsory winding-up order operated as a discharge of the company's servants was laid down by Lord Romilly in *Chapman's case* (*g*); and in *Shirreff's*

(*a*) *British Waggon Co.* v. *Lea & Co.*, 5 Q. B. D. 149, the liquidators had assigned the contract, and the assignees carried it out; but if the contract is such that it cannot be assigned, see *Tolhurst* v. *Associated Portland Cement Manufacturers* [1901], 2 K. B. 811, and *ante*, p. 979, note (*f*).

(*b*) *Ex parte Tondeur*, 5 Eq. 160.

(*c*) *Barber & Co.*, 9 Eq. 725.

(*d*) *Inchbald* v. *Western Neilgherry Coffee Co.*, 17 C. B. N. S. 733.

(*e*) 3 Eq. 341. Compare the next three notes; and as to the effect of a transfer of the company's business, see *Stirling* v. *Maitland*, 5 B. & Sm. 840.

(*f*) Observe that if the order had dismissed him he would have been entitled to damages, but they would have been reduced by the subsequent payments to him. See *Reid* v. *Explosives Co.*, *infra*, p. 1016.

(*g*) 1 Eq. 346. See, also, *Forster & Co.*, 19 L. R. Ir. 241.

case (*h*) the same judge held that a resolution to wind up voluntarily had the same effect on a manager who was appointed liquidator. In *MacDowall's case* (*i*) the liquidator issued a circular (in effect) treating the winding-up order as a discharge of the company's clerks, but saying that he should require the services of some of them, and should reduce the staff as little as possible. A clerk who was entitled by his agreement with the company to three months' notice continued to be employed by the liquidator for more than three months, and afterwards received notice to leave at the end of the then current month (*k*), which he did. He was paid for his services up to that time. He claimed three months' salary in lieu of notice, after giving credit for what he received after the notice to leave; but it was held that he was not entitled to this. He was treated as having been discharged by the winding-up order, and on this footing he had sustained no damage, having been paid more than three months' wages (*l*).

The last case on this subject is *Reid* v. *Explosives Co.* (*m*), where it was held by the Court of Appeal that a winding-up order operated as a wrongful dismissal of the plaintiff, but that he suffered no damage, as he had been employed and paid by the liquidator for the period of the notice to which he was entitled.

It must therefore be treated as practically settled that the principle acted on in *Ex parte Harding* is not applicable to clerks and servants unless the company's business is continued without break, as it was there.

Damages in these cases.

A servant engaged for an unexpired term and discharged before its expiration, is entitled to prove for the present value of all the future payments which would accrue to him if he continued to serve the whole time, and to add to that the pecuniary value of any other benefits to which he would have been entitled under his contract; and then to deduct a proper

(*h*) 14 Eq. 417.

(*i*) 32 Ch. D. 366.

(*k*) The notice was given on the 19th August.

(*l*) See the next case.

(*m*) 19 Q. B. D. 264. A receiver and manager had been appointed, and this was held to have discharged the plaintiff. *Sed qu.*, see *Marriage, Neave & Co.* [1896], 2 Ch. p. 672.

sum for the chance of death and bad health, and for his liberty to obtain fresh employment (*n*); or if he has obtained fresh employment what he has been paid for it (*o*). If the contract mentions the sum to be paid in case of dismissal, no deduction from it will be made (*p*). On the other hand, nothing is provable in respect of loss of commission on business which might or might not have been transacted (*q*).

As to the priority of wages, see *ante*, p. 999.

Authority of receivers.

The authority of a receiver appointed by debenture holders to act as the agent of the company apparently ceases when the company is ordered to be wound up (*r*).

Future rent.

Where the company is lessee for an unexpired term of years the law relating to the rights of the lessor in respect of future rent (*s*) is in an unsatisfactory state, and the authorities require to be reconsidered with reference to the decision in *Hardy* v. *Fothergill* (*t*), and section 10 of the Judicature Act, 1875 (*u*). Under the authorities as they at present stand, the lessor is entitled to have a claim entered for the full amount of the rent which will become due under the lease, and he is further entitled to prevent the company from being dissolved without notice to him. But where the lease has been assigned, the lessor is not entitled to receive more from the company than it may ultimately become liable to pay under the covenants contained in the lease (*x*). And the lessor is not entitled to a dividend on his claim until something becomes payable to him;

(*n*) *Yelland's case*, 4 Eq. 350; *Ex parte Clark*, 7 Eq. 550.

(*o*) *Reid* v. *Explosives Co.*, 19 Q. B. D. 264; *Shirreff's case*, 14 Eq. 417.

(*p*) *Ex parte Logan*, 9 Eq. 149; but see the last note.

(*q*) *Ex parte Maclure*, 5 Ch. 737. If there is an implied obligation to continue the business, see *Turner* v. *Goldsmith* [1891], 1 Q. B. 544; and as to implying such an obligation, see *ante*, p. 359, note (*e*).

(*r*) *Gosling* v. *Gaskell* [1897], A. C. 575. As to the position of such receivers, see *ante*, pp. 332 *et seq.*, and 342.

(*s*) He is entitled to prove in the ordinary way for rent up to the date of the winding-up order, and the rent will, if necessary, be apportioned. Rules, 1890, r. 103. See, too, *New Oriental Bank Corp.* (No. 2) [1895], 1 Ch. 793.

(*t*) 13 App. Ca. 351, which decided that the liability of an assignee of a lease to indemnify his assignor against future breaches of covenant was provable in bankruptcy.

(*u*) See *Craig's claim* [1895], 1 Ch. 793, and *Panther Lead Co.* [1896], 1 Ch. 978.

(*x*) See *Haytor Granite Co.*, 1 Ch. 77, reversing 1 Eq. 11, and see the next two notes.

nor is he entitled as against the other creditors to stay a dividend, nor to have any sum impounded to meet future possible demands (*y*). The lessor cannot be compelled to accept a surrender of the lease, but if the lease is beneficial to him and onerous to the company, and he is willing to prove at once for his loss on the footing of the lease being determined, the Court will assist him in so doing (*z*). If he declines to take this course, or is unable to do so owing to the lease having been assigned, or for any other reason, he must trust to his power of distress and entry, and to his rights against the assignee, if the lease is assigned. But where a company seeks to reduce its capital, it must make provision for meeting the lessor's future demands (*a*); and the shareholders are not entitled to divide the assets amongst themselves without making similar provision (*b*). The same rule applies to the voluntary winding up of a solvent company (*c*).

Rent-charge.

Although a freehold rent-charge may be recovered from the terre tenants of the land by an action of debt (*d*), the liability to pay the rent-charge does not arise *ex contractu*, but out of the pernancy of the profits by the terre tenant when the rent-charge becomes due. If, therefore, a company, entitled to land subject to such a rent-charge, repudiates the ownership of the land, the person entitled to the rent-charge cannot prove against the company for any arrears accrued since the repudiation, although the company was in possession of the land at the commencement of the winding up (*e*).

(*y*) *New Oriental Bank Corporation* (No. 2) [1895], 1 Ch. 793; *Westbourne Grove Drapery Co.*, 5 Ch. D. 248; *Horsey's claim*, 5 Eq. 561; *Ex parte Lord Elphinstone*, 10 Eq. 412.

(*z*) *Panther Lead Co.* [1896], 1 Ch. 978.

(*a*) *Telegraph Construction Co.*, 10 Eq. 384.

(*b*) *Oppenheimer* v. *British and Foreign Exchange, &c., Bank*, 6 Ch. D. 744; the amount to be set aside in respect of future rent is such an amount as when invested in Consols will, with half-yearly rests, produce the amount of rent.

(*c*) *Lord Elphinstone* v. *Monkland Iron Co.*, 11 App. Ca. 332; *Gooch* v. *London Banking Assoc.*, 32 Ch. D. 41. The right may be lost by laches, see *Craig's claim* [1895], 1 Ch. 793, where the assets had been already divided.

(*d*) *Thomas* v. *Sylvester*, L. R. 8 Q. B. 368; *Charity Commissioners* v. *Green* [1896], 2 Ch. 811.

(*e*) *Ex parte Graham*, 42 Ch. D. 343.

Subsisting policies and annuities.

Annuitants, and policy-holders whose policies are not yet due, are entitled to prove for the values of their respective annuities and policies (*f*): and the amount to be proved for is to be ascertained as at the date when the claim is made (*g*); but if a claim contingent at the commencement of the winding up ripens into a debt during its continuance the whole may be proved for, whether the day fixed for sending in claims has, or has not, passed (*h*). Moreover, it is not necessary in order to prove in respect of a policy to keep it up after the commencement of the winding up (*i*); and as between policy-holders, those whose policies have dropped are not entitled to payment in priority to the others (*k*).

How annuities and policies are to be valued.

The proper method of valuing subsisting policies gave rise to considerable difference of opinion; the Court of Chancery holding that the amount to be proved in respect of such a policy is the sum which would be required by a solvent office to effect a new policy of the same amount on the same conditions and at the same premium as the policy in respect of which the proof is made (*l*); and this principle has the advantage of doing justice to all parties so far as circumstances admit. But the practical difficulty of applying the rule induced Lord Cairns as arbitrator in the winding up of the Albert Life Assurance Company, to adopt a different rule, and to hold that the sum to be proved for was the difference between the present value of the sum insured and the present value of the premiums which the insured would have to pay in order to keep the policy on foot (*m*). The legislature has, in substance, adopted Lord Cairns' rule, for by 35 & 36 Vict. c. 41, it is enacted as follows:—

5 & 36 Vict. c. 41.

"§ 5. Where a life assurance company is being wound up by the Court, or subject to the supervision of the Court, or voluntarily, the value of every

(*f*) *Hunt's case*, 1 Hem. & M. 79; *Teete's case*, 4 N. R. 48, and see *infra*.

(*g*) *Craig's Executors' case*, 9 Eq. 706.

(*h*) *Macfarlane's claim*, 17 Ch. D. 337; and *Hill* v. *Bridges*, ib. 342, an administration action. Dividends already paid are of course not disturbed.

(*i*) *Cook's policy*, 9 Eq. 703, where the days of grace had not then expired.

(*k*) *McIver's claim*, 5 Ch. 424.

(*l*) *Holdich's case*, 14 Eq. 72; *Bell's case*, *Kerr's and Stubb's case*, *Bleackley's case*, *Craig's Executors' case*, and *Wilson's case*, 9 Eq. 706.

(*m*) See *Lancaster's case*, 14 Eq. 72, note, and Lord Romilly's observations on it in *Holdich's case*, ib.

life annuity and life policy requiring to be valued in such winding up shall be estimated in manner provided by the first schedule to this Act; but this section shall not apply to any company the winding up of which has commenced before the passing of this Act, unless the Court having cognizance of the winding up so order, which order that Court is hereby empowered to make if it think expedient so to do, on the application of any person interested in the winding up of such company."

FIRST SCHEDULE.

Rule for valuing an annuity.

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and where such tables cannot be ascertained or adopted to the satisfaction of the Court, then according to the table known as the Government Annuities Experience Table, interest being reckoned at the rate of four per centum per annum.

Rule for valuing a policy.

The value of the policy is to be the difference between the present value of the reversion in the sum assured on the decease of the life, including any bonus or addition thereto made before the commencement of the winding up, and the present value of the future annual premiums.

In calculating such present values, the rate of interest is to be assumed as being four per centum per annum, and the rate of mortality as that of the tables known as the Seventeen Offices' Experience Tables.

The premium to be calculated is to be such premium as according to the said rate of interest and rate of mortality is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges.

SECOND SCHEDULE.

Where an assurance company is being wound up by the Court or subject to the supervision of the Court, the official liquidator in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company, for life assurance, endowment, annuity, or other payment, is to ascertain the value of such policies, and give notice of such value to such persons, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court.

Debts of amalgamated companies.

Where one company has transferred its assets and liabilities to another company, and both or either of such companies are afterwards wound up, questions of some perplexity arise with reference to the debts to which they are respectively liable. In the first place it is necessary to ascertain whether the amalgamation itself was *intra vires* and binding on both companies,

or *ultra vires* and binding on neither (*n*). Assuming the amalgamation to have been *intra vires*, then it will follow from the principles investigated in an earlier part of the treatise (*o*).

1. Where the amalgamation is *intra vires*.

1. That a creditor of the company which has sold its business can prove against that company unless he has in some way released it, or unless his debt is barred by the Statute of Limitations (*p*).

2. That such creditor can prove against the purchasing company, if, but only if, that company has become liable to him by reason of some agreement, express or tacit, between it and him (*q*).

3. That if there has been a complete novation of his contract, the creditor has discharged the selling company, and can only prove against the purchasing company (*r*).

4. That the selling company is entitled to be indemnified by the purchasing company against all the liabilities of the former agreed to be taken over and discharged by the latter (*s*); but is not entitled to a lien as for unpaid purchase-money, nor to the benefit of securities effected by the purchasing company to cover the debts it had taken over (*t*).

2. Where amalgamation is *ultra vires*.

Where, however, the amalgamation is *ultra vires*, and invalid, the company which has assumed to take upon itself the liabilities of the other, cannot be made to discharge those liabilities, either by the other company or by its creditors (*u*),

(*n*) See, on this subject, *ante*, pp. 240 and 444.

(*o*) *Ante*, pp. 368 *et seq.*

(*p*) *Family Endowment Soc.*, 5 Ch. 118; *Manchester and London Life Ass., &c., Assoc.*, 9 Eq. 643, and 5 Ch. 640; *Griffith's case*, 6 Ch. 374; *National Provincial Life Ass. Soc.*, 9 Eq. 306; *Hunt's case*, 1 Hem. & M. 79. Compare *Carr's case*, 33 Beav. 542, which turned on the terms of the policy and the company's deed of settlement.

(*q*) *Commercial Bank Corporation of India and East*, 16 W. R. 958, and W. N. 1868, 166; *Ex parte Gibson*, 4 Ch. 662; *National Provincial Life Ass. Soc.*, 9 Eq. 306; *Ex parte Blood*, 9 Eq. 316; *Teete's case*, and *Rumney's case*, 4 N. R. 48, V.-C. K.

(*r*) *Merchants and Tradesmen's Ass. Soc.*, 9 Eq. 694; *Times Life Ass., &c., Co.*, 5 Ch. 381; *Anchor Ass. Co.*, 5 Ch. 632; *Spencer's case*, 6 Ch. 362; *Fleming's case*, 6 Ch. 393, and see the last two notes.

(*s*) *British Provident and Anglo-Australian Assurance Cos.*, 4 N. R. 48.

(*t*) *Western Life Ass. Soc.*, 11 Eq. 164.

(*u*) See *The Era Assurance Soc.*, *Williams's case*, and *Anchor's case*, 2 J. & H. 400.

and the company which has assumed to transfer its debts remains liable to pay them, even though its creditors may have taken securities from the other company (*x*). In order to replace both companies in their former position, it would be necessary to restore to the transferring company all its assets, and to the company taking the liabilities of the other, all monies paid in discharge of those liabilities. But it does not necessarily follow, from the mere fact that the companies have acted beyond their powers, that they are entitled to be restored to the position in which they would have been, had they never amalgamated; and it was held that a company which had taken the assets and liabilities of another, was not entitled to rank as a creditor against that other, in respect of the excess of its liabilities which had been discharged, over its assets which had been taken (*y*).

Debts due to members.

A debt due from a company to one of its own members in his character of member by way of dividends, profits, or otherwise, cannot be proved against the company in competition with creditors who are not members; but such a debt must be taken into account in adjusting the rights of the members *inter se* (*z*).

But debts due to members not as such, but in respect of matters in which they have acted as strangers, may be proved against the company in competition with other debts (*a*).

Directors' fees.

It would seem that debts due to directors in respect of fees are not due to them as members, although the company's articles of association require them to hold a share qualification (*b*).

(*x*) See *The Saxon Life Assurance Society, Anchor's case*, 2 J. & H. 408. See, too, *Hardinge* v. *Webster*, 1 Dr. & Sm. 101.

(*y*) See *The Saxon Life Assurance Society, Era case*, 2 J. & H. 408, and 1 De G. J. & Sm. 29. Compare *Wood's claim*, and *Brown's claim*, 9 W. R. 366, and 10 ib. 662.

(*z*) See 25 & 26 Vict. c. 89, § 38, cl. 7, and § 101. See also, *Addlestone Linoleum Co.*, 37 Ch. D. 191; *Exchange Drapery Co.*, 38 Ch. D. 171; and *Wakefield Rolling Stock Co.* [1892], 3 Ch. 165, where some shares had been paid up in advance.

(*a*) *Ex parte Welton* [1899], 1 Ch. 108; *Grissell's case*, 1 Ch. 528; *Ex parte Brown*, 12 Ch. D. 823, *infra*, p. 1030, and *ante*, p. 1004.

(*b*) *Dale and Plant, Ld.*, 43 Ch. D. 255; *Ex parte Beckwith* [1898], 1 Ch. 324; but see *contra*, *Ex parte Cannon*, 30 Ch. D. 629. *Qu.* if the distinction drawn by Wright, J., between the two last cases can be sustained.

Repudiation and forfeiture of shares.

A person who has taken shares in a company and has effectually repudiated them before the winding up has commenced, or who has been decided not to be a shareholder, may prove as a creditor for what he has paid to the company in respect of them (*c*). So, too, a shareholder whose shares have been effectively, though irregularly, forfeited before the commencement of the winding up, may prove as a creditor for the damages occasioned by such forfeiture (*d*); but a person induced by the fraud of the company to take shares in it, and who is a shareholder when the winding up of the company commences, cannot prove for the damages he has sustained; for such a claim is inconsistent with his position as a member of the company (*e*).

Cost-book mine.

A shareholder in a cost-book company who has relinquished his shares and paid his share of the expenses up to the date of his retirement can prove for the value of his share, even in competition with the other creditors (*f*).

Insurance societies.

Insurance societies (not limited) almost invariably issue their policies and grant their annuities on terms which render their funds alone liable to pay the policies and annuities. The efficacy of such stipulations in limiting the liability of the shareholders has been already seen (*g*); but such societies often have other creditors, and their policies and annuities are frequently held by their own members. The conflicting rights of these various persons have all to be adjusted when such societies are wound up; and after considerable difference of opinion, the following rules appear now to be settled:—

Incorporated proprietary companies.

A. In the case of an incorporated company with a share capital:

(*c*) *Hamilton* v. *Vaughan-Sherrin, &c., Co.* [1894], 3 Ch. 589; *British Goldfields of West Africa* [1899], 2 Ch. 7; *Alison's case*, 9 Ch. 1, and 15 Eq. 394, and compare *Campbell's case* and *Hippisley's case*, 9 Ch. 1, and 16 Eq. 417.

(*d*) *New Chile Gold Mining Co.*, 45 Ch. D. 598, and *ante*, pp. 728, 729. Under the circumstances, the Court treated the forfeiture as effective, though irregular.

(*e*) *Houldsworth* v. *City of Glasgow Bank*, 5 App. Ca. 317; *Addlestone Linoleum Co.*, 37 Ch. D. 191, in which *Mudford's claim*, 14 Ch. D. 634, and *Ex parte Appleyard*, 18 Ch. D. 587, are doubted. And compare *Gibson & Co.*, 5 L. R. Ir. 139, where the action was brought before the winding up, but *qu.* if this is consistent with *Houldsworth* v. *City of Glasgow Bank*, *ubi supra*.

(*f*) *Ex parte Palmer*, 7 Ch. 286, and see *ante*, p. 718.

(*g*) *Ante*, pp. 355 *et seq.*

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1. The policy-holders and annuitants, whether members of the company or not, are entitled to be paid *pari passu* with the other creditors out of the funds of the company, including therein all uncalled-up capital (*h*).

2. The policy-holders and annuitants are not entitled to be paid out of these funds in priority to the other creditors; nor to throw those creditors on what may be raised by calls beyond the nominal capital (*i*).

3. The policy-holders and annuitants can only obtain payment out of such funds; but the other creditors, whether members or not, are entitled to be paid, not only out of those funds, but also by calls beyond the amount of the nominal capital (*k*).

4. The costs of winding up are only payable out of the funds of the company after payment thereout of the claims of the policy-holders, annuitants, and creditors. If the funds are insufficient to pay these claims in full, all such costs must be paid by calls beyond the share capital (*l*).

Incorporated mutual companies.

B. In the case of an incorporated company without any capital agreed to be subscribed by the members, the same principles would, it is conceived, be applicable: subject, of course, to this modification—that the members could not be compelled to contribute anything in respect of uncalled-up capital.

Unincorporated companies.

C. In the case of an unincorporated company, whether proprietary (*i.e.*, with a share capital) or mutual (*i.e.*, where the insured look only to their own premiums), the rights of the various claimants against the funds of the company (*i.e.*,

(*h*) *English and Irish Church and University Assurance Society*, 1 Hem. & M. 79; *State Fire Insurance Co.*, 1 Hem. & M. 457, and 1 De G. J. & Sm. 634; *Professional Life Assurance Co.*, 3 Eq. 668, and 3 Ch. 167. See, further, *Winstone's case*, 12 Ch. D. 239; *Albion Life Ass. Soc.*, 15 Ch. D. 79, and 16 ib. 83; and *Sander's case*, 20 ib. 403, as to the position of policy-holders who are members in a registered unlimited company with two classes of shareholders.

(*i*) *International Life Ass. Soc.*, 2 Ch. D. 476; *State Fire Insurance Co.*, and *Professional Life Ass. Co.*, *ubi supra*.

(*k*) See the cases in the last two notes, which remove the doubts expressed on this point in *Athenæum Life Assurance Society*, Johns. 633.

(*l*) *Agriculturist Cattle Ins. Co.*, 10 Ch. 1; *Professional Life Ass. Co.*, 3 Ch. 167, and 3 Eq. 668.

whatever can be got at without making a call) will be the same as before; but the members of the company cannot compete with their own creditors against the funds raisable by calls (*m*). But the holders of policies in such companies are not liable to contribute to the debts of the company (*n*).

A provision that policies shall be paid only out of the funds of a company does not entitle the holder of a policy which has become payable to any priority over the holders of policies which are still subsisting (*o*). The only difference between the two cases is in the amount provable against the company.

3. *Set-off.*

a.) As between the company and strangers.

Set-off between non-members and the company.

As between a company being wound up on the one hand, and non-contributories on the other, when the company is insolvent the rules applicable in bankruptcy to cases of mutual credit are introduced by the Judicature Act, 1875 (*p*). Before that Act was passed the ordinary rules of set-off were applicable (*q*), nor was it essential that both debts should have been actually due before the winding-up order was made (*r*). Since the Judicature Act a debtor to the company can set off a claim for unliquidated damages for a breach of contract by the company (*s*). But a creditor of the company cannot set off a debt due to him from the company against a claim made by the liquidator in respect of a distinct contract entered into with him (*t*). There can be no set-off when the claims on

(*m*) See, on this subject, The Law of Mutual Life Assurance, by Thomas Brett.

(*n*) *Great Britain Mutual Life Ass. Soc.*, 16 Ch. D. 246. For the rights of policy-holders when the company's contracts are reduced, see *Great Britain Mutual Life Ass. Soc.*, 19 Ch. D. 39, and 20 Ch. D. 351.

(*o*) *McIver's claim*, 5 Ch. 424.

(*p*) 38 & 39 Vict. c. 77, § 10, *ante*, p. 1001, and Partn. pp. 671 *et seq.*

(*q*) *Anderson's case*, 3 Eq. 337; and see *Mersey Steel and Iron Co.* v. *Naylor & Co.*, 9 Q. B. D. at p. 667.

(*r*) Ib., and see *Ex parte James*, 8 Eq. 225.

(*s*) *Mersey Steel and Iron Co.* v. *Naylor & Co.*, 9 App. Ca. 434, affirming 9 Q. B. D. 648, *ante*, p. 1014; and see *Lee and Chapman's case*, 30 Ch. D. 216.

(*t*) *Ince Hall Mills Co.* v. *Douglas Forge Co.*, 8 Q. B. D. 179; and *Sankey Brook Coal Co.* v. *Marsh*, L. R. 6 Ex. 185, explained in 9 Q. B. D. at p. 669.

each side do not result in pecuniary liabilities, *e.g.*, a debt cannot be set off against a claim for the return of goods (*u*), or when there is no mutuality, *e.g.* the balance of a fund, entrusted by the company to a person for a special purpose, remaining in his hands after the purpose has been satisfied, cannot be set off by him against a debt owing to him by the company, unless he can show that the balance was retained by him with the consent of the company (*x*). Nor can the estimated value of a current policy be set off against a claim for monies advanced on the security of it (*y*). It has moreover been decided that a person who has accepted bills in favour of the company is not entitled to restrain the liquidator from negotiating them before they are due, although the result of such negotiation may be to deprive the acceptor of his right to set off against those bills a debt owing to him by the company (*z*).

Buying up debts in order to set them off.

It is a common practice for the debtors of a company which is being wound up to buy up bills of the company in order to set such bills off against what the purchasers themselves owe to the company. The legality of this practice has been questioned, and has not yet been settled by decision. The general scope of the Companies Act, 1862, is hardly consistent with any device by which one creditor obtains a preference over others after the winding up has commenced; but it is doubtful whether the language of the Act is sufficiently clear to defeat the practice in question (*a*). The effect of the 10th section of the Judicature Act, 1875, on this point has not been determined (*b*).

(*u*) *Eberle's Hotels, &c., Co.* v. *E. Jonas & Bros.*, 18 Q. B. D. 459.

(*x*) *Mid - Kent Fruit Factory* [1896], 1 Ch. 567.

(*y*) *Ex parte Price*, 10 Ch. 648, and compare *Sovereign Life Ass. Co.* v. *Dodd* [1892], 2 Q. B. 573, where the policy had matured before action brought, and the set-off was allowed. The policy in this case was payable only out of the funds of the company, but as when the policy matured the funds were sufficient to pay it, this was immaterial.

(*z*) *Smith, Fleming & Co.'s case* and *Gledstane's Co.'s case*, 1 Ch. 538.

(*a*) See the case in the last note.

(*b*) As to the rule in bankruptcy, see *In re Gillespie*, 14 Q. B. D. 963; *Dickson* v. *Evans*, 6 T. R. 57, which show that rights of set-off depend on the state of things at the date of the receiving order. See, also, *Ex parte Mant* [1900], 1 Q. B. 546; *Ex parte Theys*, 25 Ch. D. 587. As to the expenses of protest, &c., for

The principles by which rights of set-off are regulated have been already noticed (*c*).

If the set-off is a matter of account, the liquidator may deal with it when examining the proof (*d*).

Set-off against assignees.

As regards debts which have been assigned, it is settled that a debtor cannot set off against the assignee of a debt due from him, any claim against the assignor which has arisen since the assignment was completed by notice to the debtor (*e*), unless such claim arises out of the same contract as that from which the debt assigned arose, and is intimately connected with it (*f*). This rule applies to debts proved against a company and afterwards assigned, and prevents the liquidator from setting-off against the assignee a claim against the assignor founded on a breach of trust (*g*). If a director accepts office in a company, and by so doing becomes bound under the articles of association to acquire a share qualification, his agreement to take these shares, and the agreement by the company to remunerate him for his services, are so connected together that the company can set off the money due to them from him for his qualification shares against a claim for his remuneration by an assignee thereof (*h*). When a company seeks to set off calls on an assignor's shares against a claim by an assignee, the liability to pay the calls must have ripened into a debt before the assignment was completed by notice (*hh*). The liability to pay calls made before the winding up ripens into a debt when the calls are made (*i*); the liability to pay calls in the winding up is not a debt until the call has been made (*ii*), but when it has been made, the liability is considered to have ripened into a

Calls.

which the drawer of a bill, accepted and dishonoured by the company, can prove, see *Ex parte Bank of Brazil* [1893], 2 Ch. 438; and *Re Gillespie*, 18 Q. B. D. 286; and Bills of Exchange Act, 1882, § 57.

(*c*) *Ante*, pp. 387 *et seq.*; and Partn. pp. 299 *et seq.*

(*d*) *National Wholemeal Bread, &c., Co.* [1892], 2 Ch. 457.

(*e*) *Christie* v. *Taunton, Delmard, &c., Co.* [1893], 2 Ch. 175; *Watson* v. *Mid-Wales Rail. Co.*, L. R. 2 C. P. 593.

(*f*) *Government of Newfoundland* v. *Newfoundland Rail. Co.*, 13 App. Ca. 199, and cases there cited.

(*g*) *Ex parte Theys*, 25 Ch. D. 587, and 22 ib. 122. See also *Farmer* v. *Goy & Co., Ld.* [1900], 2 Ch. 149. Compare *Ex parte Mackenzie*, 7 Eq. 240.

(*h*) *Salton* v. *Beeston Cycle Co.* [1899], 1 Ch. 775.

(*hh*) *Christie* v. *Taunton, Delmard, &c., Co.* [1893], 2 Ch. 175.

(*i*) *Whittaker* v. *Kershaw*, 45 Ch. D. 320; and Comp. Act, 1862, § 16.

(*ii*) See *Grissell's case*, 1 Ch. 528.

debt at the commencement of the winding up (*j*). Again, a debtor may by contract or otherwise preclude himself from disputing a given debt when the debt is assigned, and from bringing it into account with cross demands which he may have against his creditor; and wherever this has been done (*k*) the assignee of the debt so isolated can sue the debtor for it and obtain payment notwithstanding any cross demands which he may have against the original creditor. Advantage of this principle is constantly taken by companies who issue under seal promises to pay the assign, or holder, or bearer of the instrument. A promise by a company to pay A. B. or order, or bearer, if properly stamped has been held to be a promissory note, although under the seal of the company (*l*); and the *bonâ fide* holder for value of such an instrument can, if it is not altogether *ultra vires*, prove against the company in his own name, and he will not be affected by any equities or rights of set-off which may exist between the company and the original payee (*m*). And even where the instrument cannot be treated as a promissory note, yet if its form and the circumstances under which it was issued are such as to show that the company intended that the payee should be able to raise money on it, and that the transferee should take it without reference to the state of accounts subsisting between the payee and the company, the transferee is entitled to prove on the instrument in his own name, and his proof will not be subject to any set-off by reason of claims which the company may have against the transferor. A leading case on this subject arose on a debenture of the *Blakely Ordnance Company* (*n*). There the debenture was payable to bearer,

Set-off against holders of debentures, &c.

Blakely Ordnance Company's case.

(*j*) *Christie* v. *Taunton, Delmard, &c., Co.* [1893], 2 Ch. 175, and *Ex parte Mackenzie*, 7 Eq. 240, explained [1893], 2 Ch. p. 185, and Comp. Act, 1862, § 75.

(*k*) As a rule, assignees of debts are in no better position than their assignors, unless, by reason of special circumstances, *Athenæum Life Ass. Soc.* v. *Pooley*, 3 De G. & J. 294; *Financial Corporation's claim*, 3 Ch. 355; *Ex parte Mackenzie*, 7 Eq. 240, and Judicature Act, 1873, § 25 (6). Compare *Brunton's claim*, 19 Eq. 302.

(*l*) *Ex parte City Bank*, 3 Ch. 758; *Ex parte Colborne and Strawbridge*, 11 Eq. 478. Bills of Exchange Act, 1882, § 91, cl. 2. See as to the Negotiability of such documents, *ante*, pp. 300, 301, and 657.

(*m*) Ib.

(*n*) *Ex parte New Zealand Banking Corporation*, 3 Ch. 154. Com-

and the bearer was authorised to give a receipt for the money; the debenture was issued to a promoter of the company, pursuant to a prior agreement with him, and the agreement was confirmed by the company's articles of association. It was held that the bearer could prove in his own name without being subject to any equities between the company and the promoter, to whom the debenture had been given. *A fortiori* will the company be precluded from availing itself as against the transferee of any rights of set-off which the company may have against the transferor, if the company has induced the transferee to act on the assumption that he would become the company's creditor (*o*), or has recognised and treated him as such (*p*). Moreover, if the company issues debentures payable to the registered holder and expressed to be transferable free from equities, the company will not be allowed to set-off a claim which it may have against a transferor, against a transferee who has not in fact been registered, but who has acquired a complete right to be registered, and has applied to be registered before having notice of the company's claim; this is so even though the transfer is made after the commencement of the winding up, and after judgment in a debenture holder's action (*q*).

pare *Financial Corporation's claim*, ib. 355, where the debenture was payable to A., his executors, administrators, or transferees, and the person presenting it was empowered to give receipts; but there was no agreement to give them in this form, and the consideration for the debentures had failed. The case was not one of set-off at all; and see *Romford Canal Co.*, 24 Ch. D. 85.

(*o*) *Ex parte Asiatic Banking Corporation*, 2 Ch. 391, a case of a letter of credit shown to the claimant. *Dickson* v. *Swansea Vale Railway Co.*, L. R. 4 Q. B. 44, debenture issued on purpose to enable the taker to raise money on it. See, too, *Robinson* v. *Montgomeryshire Brewery Co.* [1896], 2 Ch. 841.

(*p*) *Brunton's claim*, 19 Eq. 302; *Higgs* v. *Northern Assam Tea Co.*, L. R. 4 Ex. 387; *Ex parte Universal Life Ass. Co.*, 10 Eq. 458. In both of these the claimant had been registered as proprietor. See, also, *Woodhams* v. *Anglo-Australian Ass. Co.*, 3 Giff. 238, where he was told all was right. *Ex parte Chorley*, 11 Eq. 157, where the company had allowed the transferee to obtain judgment. See, also, *Hulett's case*, 2 J. & H. 306.

(*q*) *Farmer* v. *Goy & Co., Ld.* [1900], 2 Ch. 149. Compare *Christie* v. *Taunton, Delmard, &c., Co.* [1893], 2 Ch. 175, where the debenture holders had made no claim to be registered. As to the effect of such a provision between debenture holders *inter se*, see *ante*, p. 302, and of a *pari passu* clause on the right of set-off, see *ante*, p. 328.

b.) As between the company and contributories.

Set-off between members and the company.

The right of a member of a company which is being wound up to set-off what is owing to him by the company against what is owing by him in respect of calls, or otherwise, does not depend simply on the general principles applicable to set-off, but also on the special enactments contained in § 38, cl. 7, and § 101 of the Companies Act, 1862. These are not affected by § 10 of the Judicature Act, 1875 (*r*). By reference to these sections, it will be seen—

1. That whether a company is limited or unlimited, money due to a contributory in his character of member, is not to be treated as a debt of the company payable to him in competition with creditors who are not members (*s*).

2. That where a company is limited no set-off whatever against an order for payment is allowed in favour of a contributory indebted to the company, except when the rights of the contributories *inter se* come to be adjusted (*t*).

3. That where a company is unlimited, money due to a contributory, not as a member, but on some independent dealing or contract, may be set off as if such money were owing to a person unconnected with the company (*u*).

4. That in adjusting the rights of contributories *inter se*, monies due to contributories from the company on any account may be set off against money due from them to the company in respect of calls or otherwise; and that in such cases there is no difference between limited and unlimited companies (*x*).

(*r*) See *Auriferous Properties, Limited* [1898], 1 Ch. 691; *Gill's case*, 12 Ch. D. 755; *Ex parte Brown*, ib. 823; *Re Whitehouse & Co.*, 9 ib. 595.

(*s*) § 38, cl. 7; *Addlestone Linoleum Co.*, 37 Ch. D. 191; *New Chile Gold Mining Co.*, 45 Ch. D. p. 604, and cases *ante*, p. 1022; and § 101. Observe that the word member is used in § 38, and contributory in § 101.

(*t*) § 101. See *Auriferous Properties, Ld.* [1898], 1 Ch. 691; *Gill's case*, 12 Ch. D. 755; *Re Whitehouse & Co.*, 9 ib. 595. This differs from the rule which prevailed under the Acts of 1856–58. See 21 & 22 Vict. c. 60, § 17, and *Garnet and Moseley Gold Mining Co.* v. *Sutton*, 3 B. & Sm. 321; *Barrett's case*, 4 De G. J. & Sm. 416 and 756.

(*u*) § 101. See *Ex parte Brown*, 12 Ch. D. 823; *Professional Life Ass. Co.*, 3 Ch. 167; *Gibbs and West's case*, 10 Eq. 312; a case of an insurance company, with the usual restriction as to liability being confined to the funds of the company.

(*x*) § 38, cl. 7, and § 101.

Grissell's case.

The whole subject now under consideration was carefully considered in *Grissell's case* (*y*), in which it was held—1. That a creditor of a limited company, who was also a contributory in it, was not bound to pay the full amount remaining unpaid on his shares before receiving any dividend on his debt; 2. That he was not entitled to deduct the calls made or to be made upon him from his debt and to receive a dividend on the balance; 3. That he was entitled to prove his whole debt, and to receive a dividend on it *pari passu* with other creditors, and was liable, on the other hand, to pay all calls upon him in full as they might be made.

It might be inferred from this decision that the only right to set off in such cases is to deduct sums actually due and payable by the contributory in respect of calls from the amount of dividend actually payable to him in respect of his proof. But it has since been held that where a debt is proved by a contributory, the company is entitled to set off all calls due from him and actually in arrear at the time of proof (*z*), just as it could set off any other debt due by the contributory to the company against a debt due by the company to him.

Company contributory.

It has further been held that the rules above alluded to apply when the contributory is a company which is being wound up (*a*); but in such a case the contributory cannot take any dividends on the debt due to it until it has paid all calls made on it in full; it is not entitled to receive such dividends on payment of a dividend on the calls (*b*).

Exceptions to this rule.

The provisions of the Act and the above decisions do not, however, apply to debts or costs which have become due to contributories from the company acting by its liquidators in

(*y*) 1 Ch. 528, and see *Black & Co.'s case*, 8 Ch. 254; *Barnett's case*, 19 Eq. 449; *Calisher's case*, 5 Eq. 214, as to calls made before the winding up, and *Ex parte Mackenzie*, 7 Eq. 240. The Judicature Act has not altered the law as laid down in this case, see *ante*, note (*r*).

(*z*) See *ante*, p. 754. See, also, *Ex parte Mackenzie*, 7 Eq. 240, where the proof was by the assignee of a debenture; the assignment and call were both made after the commencement of the winding up, see *ante*, p. 1027.

(*a*) *Auriferous Properties, Ld.* [1898], 1 Ch. 691, and compare cases in note (*d*).

(*b*) *Auriferous Properties, Ld.* (No. 2) [1898], 2 Ch. 429.

the course of the winding up (*c*); nor where the contributory is bankrupt, or his estate is being administered under the Bankruptcy Acts; for then, whether the liquidator proves against the bankrupt's estate (*d*), or whether the trustee in bankruptcy proves against the company (*e*), the balance due from the one estate to the other, after setting off all mutual debts and credits, is all that can be proved. Moreover, if two debts have been actually set off before the winding up commenced, the liquidator cannot disturb the set-off so made (*f*); but agreements as to set-off made when the company is in difficulties, are regarded very suspiciously, and may be altogether void as against creditors on the ground of fraudulent preference, if the set-off is such that it could not have been made if the winding up had already commenced (*g*), and apart from any question of fraudulent preference where the agreement was with a director and related to a debt secured by a debenture not then payable, the agreement was held invalid (*h*).

Indeed, the better opinion seems to be, that agreements for paying calls by setting off debts, which may afterwards become due from the company, are not binding on the company, at least when it is being wound up (*i*).

Observations on § 101.

It is worthy of remark, that § 101, which prevents set-off in favour of the contributories of limited companies, applies in terms only to cases in which a summary order is made upon a contributory for payment of money due by him to the company; and in one case it was held that where a company was being wound up voluntarily, and the liquidator brought an

(*c*) See *Ex parte Clark*, 7 Eq. 550; see, also, *Ex parte Smith*, 3 Ch. 125; *General Exchange Bank*, 4 Eq. 138.

(*d*) *Re Duckworth*, 2 Ch. 578; *Ex parte Strang*, 5 Ch. 492; and compare case in note (*a*); and see observations of Wright, J. [1898], 1 Ch. pp. 697, 698.

(*e*) *Carralli and Haggard's claim*, 4 Ch. 174, and the last note.

(*f*) *Habershon's case*, 5 Eq. 286, and see *Spargo's case*, 8 Ch. 407, and others of that class.

(*g*) *Kent's case*, 39 Ch. D. 259; *Washington Diamond Mining Co.* [1893], 3 Ch. 95, where arrangements relating to payments in respect of unpaid shares held by directors were set aside on this ground, and see *ante*, pp. 901, 902.

(*h*) *Habershon's case*, 5 Eq. 286.

(*i*) See *Pellatt's case*, 2 Ch. 527; *Calisher's case*, 5 Eq. 214; *Barge's case*, ib. 420; 30 & 31 Vict. c. 131, § 25. This section, however, is now repealed, see *infra*, p. 1033.

action for calls made in the winding up, a plea of set-off afforded a good defence to the action (*k*). But this decision has been justly criticised, and cannot be relied upon (*l*). The mode of winding up is immaterial with respect to the right of set-off; and in no case can a contributory defeat an action by a limited company in liquidation by a set-off, unless he can show that all the creditors are paid, and that as between himself and the other contributories, the set-off ought to be allowed.

Industrial and Provident Societies Act, 1893.

The Industrial and Provident Societies Act, 1893, gives the society a lien on the shares of any member for any debt due to it by him, and entitles the society to set off any sum credited to a member thereon in payment of his debt (*m*). Under this section it has been decided that the managing committee of the society, if acting *bonâ fide*, may set off the monies standing to the member's credit against debts due to the society for goods supplied to him by the society, although the committee knew at the time of the set-off that the society was hopelessly insolvent, and that such a transaction cannot be impeached on the winding up, either on the ground of a fraudulent preference or otherwise (*n*).

Proceedings under § 165 of the Companies Act, 1862.

A director has no right to set off a debt due to him from the company against a claim made by the liquidator under § 165 (*o*), or under the corresponding section (§ 10) in the Companies (Winding-up) Act, 1890.

Companies Act, 1867, § 25.

The right of a contributory to set-off a debt due to him from the company against calls made on him was very materially affected by the Companies Act, 1867 (*p*); and if, in a case to

(*k*) *Brighton Arcade Co.* v. *Dowling*, L. R. 3 C. P. 175.

(*l*) *Whitehouse & Co.*, 9 Ch. D. 595; *Re Pyle Works*, 44 Ch. D. p. 585; *Black & Co.'s case*, 8 Ch. 254; *Sankey Brook Coal Co.* v. *Marsh*, L. R. 6 Ex. 185; and see 10 Eq. 330, *per* V.-C. Malins in *Gibbs and West's case*.

(*m*) 56 & 57 Vict. c. 39, § 23.

(*n*) *Gwawr-y-Gweither Industrial, &c., Soc.* [1901], 2 K. B. 477. The member is not a creditor within the meaning of § 164 of the Comp. Act, 1862, as to which see *ante*, pp. 901, 902.

(*o*) *Carriage Co-operative Supply Association*, 27 Ch. D. 322; *Ex parte Pelly*, 21 Ch. D. 492; *Pearse's case*, ib. 498, n.; *Flitcroft's case*, ib. 519. And see *Ex parte Theys*, 25 Ch. D. 587, where the director had assigned the debt due to him before an order was made against him. See, too, *Farmer* v. *Goy & Co., Ld.* [1900], 2 Ch. 149.

(*p*) § 25. This section is now repealed by § 33 of the Companies Act, 1900. See *ante*, pp. 565 *et seq.*

which that Act applies, a holder of nominally paid-up shares has a call made on him in respect of them, he cannot avail himself of a set-off, agreed upon when the shares were issued, unless the agreement has been duly registered (*q*). But it is conceived that the Act in question did not preclude a set-off against a call in any other case in which such set-off is admissible under the Companies Act, 1862.

SECTION XIII.—CONTRIBUTORIES.

1. *The list of contributories.*

List of contributories.

The persons who, on the winding up of a company, are compellable to pay its debts by contribution amongst themselves, are termed *contributories* (*r*); and one of the first duties of the Court, after making a winding-up order, is to settle the list of contributories (*s*). Who are the persons to be put on the list will be examined presently. With respect to settling the list, it is to be observed—1. That the Court has power to rectify the company's register of members (*t*); 2. That persons who are contributories in their own right are to be distinguished from persons who are contributories as the representatives or as being liable to the debts of others; and 3. That where the personal representative of a deceased contributory is placed on the list, it is not necessary to add his heirs or devisees, although they may be added if the Court thinks fit (*u*).

Settling the list.

By the Companies (Winding-up) Act, 1890, and the Rules thereunder, the power of the Court to settle the list of contributories is now to be exercised by the liquidator as an officer of the Court, and subject to its control (*x*); but he has no power to rectify the register (*y*). It is the duty of the

(*q*) *Cleland's case*, 14 Eq. 387; *Pagin and Gill's case*, 6 Ch. D. 681.

(*r*) This word was introduced by 11 & 12 Vict. c. 45, § 3.

(*s*) See the Companies Act, 1862, § 98.

(*t*) § 98 and § 35.

(*u*) § 99.

(*x*) Act, 1890, § 13. Rules, 1890, rr. 83 *et seq.*

(*y*) Under § 13, rules may be made enabling the liquidator to exercise this power with the special leave of the Court, but no such rules have been made.

liquidator (z) to appoint a day for the purpose of settling the list (a), and to give notice in writing to every person (whether resident within the jurisdiction of the Court or not (b)) whom he proposes to include in the list, stating in what character and for what number of shares he proposes to include him (c). On the appointed day the liquidator is to hear any person who objects to be settled as a contributory, and after such hearing, it is his duty finally to settle the list (d).

In all ordinary cases the liquidator should proceed to settle the list in the manner above indicated, but in cases of doubt he may, if special circumstances render such a course convenient, apply to the Court for a declaration that a person is liable to be placed on the list (e).

Examination of alleged contributory.

A person may be summoned to be sworn and examined in chambers, in order to determine whether he ought to be a contributory or not, although the list may have been already settled (f).

Forms of lists.

Forms of lists of contributories are given in the schedule to the Rules issued under the Companies (Winding-up) Act, 1890 (g).

Attendance on settling list.

Every contributory on the list, and every creditor whose debt or claim is allowed, is entitled, provided he has signed the registrar's book, to attend the winding-up proceedings at his own expense (h); and therefore to attend on the settlement

(z) These powers may be exercised by the Official Receiver when acting as provisional liquidator, *English Bank of River Plate* [1892], 1 Ch. 391.

(a) Rules, 1890, r. 83.

(b) See *Nathan, Newman & Co.*, 35 Ch. D. 1; a decision under the former rules. Rules, 1862, r. 30.

(c) Rules, 1890, r. 84, and for form of notice, Form 46. As to notices under the older Acts, see 12 & 13 Vict. c. 108, §§ 26 and 32, which altered the law as to notices laid down in *Glaholme's case*, 1 De G. & S. 583, and *Hutchinson's case*, ib. 563.

(d) Rules, 1890, r. 85. For form of his certificate of final settlement, see Form 47.

(e) *Wragg, Limited* [1897], 1 Ch. p. 802.

(f) See *Re The Esgair Mwyn Mining Co.*, 8 W. R. 660, and *ante*, pp. 933 *et seq.*

(g) See Rules, 1890, forms 45 and 47, and under former Rules, Forms 24, 29, and 31 in the 3rd Schedule to the Rules of 1862. For the form under the older Winding-up Acts, see 1 De G. & S. 548.

(h) Rules, 1890, rr. 173 and 173A. This rule does not give a creditor the right to be heard in argument, nor to his costs if his attendance is unnecessary, *Lord R. Montagu's case* and *Grey's case*, W. N. 1888, 137, nor to attend proceedings under

of the list of contributories. The judge, moreover, can appoint persons to represent contributories and creditors to attend the settlement of the list of contributories, as well as other matters arising in the winding up (*i*).

Varying and resettling list.

When the list has been settled the liquidator is to give notice to every person on the list stating in what character and for what shares he is on the list, and informing him that any application to remove his name from, or to vary the list must be made to the Court by summons within twenty-one days from the service of the notice (*k*); unless the time be extended no such application will be entertained after the expiration of that period (*l*). The liquidator may from time to time vary or add to the list, and in doing so he must proceed in the same manner as in settling the original list (*m*).

Although the Court has power to extend the time within which an application to vary the list may be made (*n*), and no time is limited after which it may not be varied by the liquidator, the cases decided under the old practice show that these powers are to be exercised with great caution. An application to vary the list after the expiration of the proper time will only be entertained under special circumstances, and when there are good reasons for not having made the application sooner.

Alexander's case.

As instances in which the power to vary and re-settle the

§ 115, see *ante*, p. 936. As to his right of cross-examination, see *Brampton* v. *Longtown Rail. Co.*, 11 Eq. 428. See, also, *Bugg's case*, 2 Dr. & Sm. 452, where some of the contributories sought to put on the list a person omitted by the liquidator, and see *infra*, p. 1039, note (*d*).

(*i*) Though the present Rules have no rule corresponding to r. 61 of the Rules of 1862 (which is still applicable to a winding up under supervision, see *ante*, p. 921), *semble*, the Court has this power under Rules, 1890, r. 178, and R. S. C. Ord. XVI., r. 32 (b). See under the former rule, *McIver's claim*, 5 Ch. 424, and *Ex parte Oakes and Peek*, 3 Eq. p. 634. The creditor's representative appointed under 20 & 21 Vict. c. 78, had a right to attend at the settling of the list, *Mexican and South American Mining Co.*, 26 Beav. 172, and see *infra*, p. 1039, note (*h*).

(*k*) Rules, 1890, r. 86. Form of notice, form 48, and of affidavit of service of notice, form 50, and under the former practice, *Dickson's case*, 12 Ch. D. 298.

(*l*) Rules, 1890, r. 87. For power of Court to extend time, see ib. r. 176.

(*m*) Rules, 1890, r. 88; for form of supplemental list, see form 49.

(*n*) Rules, 1890, r. 176, *Onward Building Soc.* [1891], 2 Q. B. 463.

list was exercised on the discovery of material facts, reference may be made to *Alexander's case* and *Shewell's case*. In *Alexander's case* (*o*), shares had been transferred, *malâ fide*, by A. to B.; before the facts were known B. was put on the list, and actually attached for non-payment of calls upon him; but that was held not sufficient to prevent A. from being placed on the list after the invalidity of the transfer had been discovered.

Shewell's case.

In *Shewell's case* (*p*) the shares of the company were transferable to bearer, and a broker had purchased shares for his own solicitor, and was improperly put on the list, and calls were made on him. He referred the matter to the solicitor, who paid the calls out of his own money, and the broker heard no more about them. The solicitor died, and further calls were made on the broker, and he then applied to have his name removed from the list of contributories, and his name was removed accordingly.

Laches.

This case is valuable as showing that mere laches on the part of a contributory in allowing his name to remain on the list does not necessarily preclude him from having it removed if the company has not been damnified by his delay.

Transfer of shares after the winding up.

Where shares have been transferred after the commencement of the winding up, the transferee is not entitled to be registered as the owner of them without the sanction of the Court, and the Court will not, except on strong grounds, rectify the register or vary the list of contributories by substituting the name of the transferee for that of the transferor (*q*).

Power to rectify the register of members.

In order to settle the list of contributories properly the Court has power to rectify the company's register of members (*r*). Under the former practice, when a company was

(*o*) 9 W. R. 410.

(*p*) 2 Ch. 387. For other instances, see *Hopkin's case*, 4 De G. J. & Sm. 342; *Ex parte Curzon*, 3 Drew. 508; *Crosfield's case*, 4 De G. & S. 338, and 2 De G. Mc. & G. 128; *Ex parte Best*, 1 Sim. N. S. 193; *Ex parte Kelly's Executors*, 9 W. R. 329, and *Re The Esgair Mwyn Mining Co.*, 8 ib. 660.

(*q*) *Onward Building Soc.* [1891], 2 Q. B. 463. *Secus*, if in the case of a voluntary winding up the transfers have been sanctioned by the liquidator under Comp. Act, 1862, § 131, *Taylor, Phillips, and Richard's cases* [1897], 1 Ch. 299.

(*r*) See §§ 98 and 35, cases in note (*q*), and *ante*, pp. 165 *et seq.*, and *infra*, p. 1045.

being wound up by the Court, the Court, when settling the list of contributories, used to rectify the register without any special application for that particular purpose (*s*). Under the present practice the list is settled by the liquidator, and he has no power to rectify the register; an application to the Court is therefore necessary when rectification is required (*t*). An application for this purpose is also necessary when the company is being wound up voluntarily, or subject to the supervision of the Court (*u*).

Appeals from liquidator.

Any person aggrieved by a decision of the liquidator may apply to the Court to reverse or modify his decision (*x*); the application is by summons (*y*). If the summons is successful, the liquidator will, as a rule, be ordered to pay the costs out of the assets, and not personally (*z*). Where there are several cases of the same kind, all determined by the liquidator alike, and one of them is selected as a test case, and is successfully appealed, the list of contributories may, it is conceived, be rectified as to the others by the liquidator without separate applications to the Court (*a*).

Test cases

Appeals from the judge.

The practice with reference to appeals from orders settling persons on or off the list of contributories is the same as in other cases (*b*). An appeal from the decision of the judge acting in the winding up, and, it is apprehended, from the

(*s*) See § 98, *Breckenridge's case*, 2 Hem. & M. 642; *Whittet's case*, 2 De G. & J. 577; *Birch's case*, ib. 10.

(*t*) See Act, 1890, § 13, and *ante*, p. 1034, note (*y*).

(*u*) Power to rectify the register may at first sight be supposed to be given to the liquidator in such cases by § 133, cl. 8, taken in connection with § 98. But a closer examination of the words of those sections, and of § 35, will, it is conceived, show that this is not so. See *Gilbert's case*, 5 Ch. 559; but see *Brighton Arcade Co.* v. *Dowliny*, L. R. 3 C. P. p. 187.

(*x*) Act, 1890, § 24, and see note (*d*) *infra*.

(*y*) Rules, 1890, r. 86. Rules, 1892, r. 5.

(*z*) *Salisbury-Jones and Dale's case* [1895], 1 Ch. 333, overruling *Staffordshire Gas and Coke Co.* [1893], 3 Ch. 523.

(*a*) See *Ex parte Munday*, 31 Beav. 206, and Rules, 1890, r. 88. If not a test case, such a decision might be a sufficient reason for allowing the other persons to apply to vary the liquidator's decision, though the 21 days had expired; see *Esdaile* v. *Payne*, 40 Ch. D. 520, as to leave to appeal in such cases, and same case *sub nom. Lane* v. *Esdaile* [1891], A. C. 210, and *ante*, p. 950.

(*b*) See Act, 1862, § 124, *ante*, pp. 948 *et seq.*

liquidator (*c*), may be made not only by a person who contends that he is wrongly put on, or excluded from the list, and by the liquidator on behalf of the company, but also by any other contributory (*d*), or (it is presumed) by any creditor who, under the Act, is a party to the winding up (*e*). The question on the appeal being simply whether a given individual ought or ought not to be on the list, it is not requisite to bring before the Court another person who will have to be put on the list, if the individual in question is struck off (*f*). And an appeal cannot be objected to on the ground that there is no means of settling the person, who is liable for the shares if the appeal is successful, on the list of contributories (*g*). The usual parties to the appeal are the alleged contributory and the liquidator (*h*).

No person to be on the list until his liability to contribute is established.

No person ought to be settled on the list of contributories until his liability to contribute to some debt, liability, or loss of the company being wound up has been ascertained: he ought not, for example, to be put on the list "in respect of any expenditure which he may be proved to have authorised" (*i*).

Companies limited by guarantee.

In the case of companies limited by guarantee and not having a capital divided into shares, a person is only liable to be placed on the list in respect of the amount which by the company's memorandum of association he has undertaken to contribute in the event of the company being wound up, although he may

(*c*) Act, 1890, § 24.

(*d*) See *Bush's case*, 6 Ch. 246; *Ship's case*, 2 De G. J. & S. 544, and *Downes* v. *Ship*, L. R. 3 H. L. 343, where a contributory obtained leave to intervene. See, also, *Blackburn's case*, 3 Drew. 409, and 8 De G. M. & G. 177. *In re Bodmin United Mines*, 23 Beav. 385, the official manager contended that a person ought to be on the list; some contributories applied to be heard on the same side, but the Court declined to hear them. See *Re Norwich Yarn Co.*, 13 Beav. 428, note; and see *Re Etna Ins. Co.*, Ir. Rep. 7 Eq. 362.

(*e*) He must obtain special leave if he has not appeared at the hearing, see *Securities Ins. Co.* [1894], 1 Ch. 410.

(*f*) See *Curtis' case*, 6 Eq. 455; *Sanderson's case*, 3 De G. & S. 66; *Hull's case*, ib. 80.

(*g*) *Duchess of Westminster Silver Lead Ore Co.*, 10 Ch. D. 307.

(*h*) The creditor's representative appeared in *Nicol's case*, 3 De G. & J. 387, but was not allowed to be heard. In *Ex parte Finlay & Co.*, 27 L. J. Ch. 658, his costs were allowed, and see *ante*, p. 1036, note (*i*). As to the costs of the liquidator, see *Musgrave and Hart's case*, 5 Eq. 193.

(*i*) *Ex parte Riddell*, 1 Sim. N. S. 402.

be a debtor to the company or to the other members for other monies under the articles of association (*k*).

As regards persons secondarily liable.

Under the Acts of 1848—49, it was ultimately held that if there were two classes of persons liable to creditors, but one of those classes was bound to indemnify the other against all demands, the persons composing the class secondarily liable ought not to be on the list until it became necessary to put them there, in order that justice might be done as between themselves (*l*).

Past members.

So, under the Companies Act, 1862, past members are only liable to contribute in the event of the present members being unable to discharge their liabilities; and until there is evidence to show that recourse must be had to the past members, they are not put on the list at all (*m*).

2. *Who are contributories.*

General observations.

1. Under Acts of 1848–49.

Under the Winding-up Acts of 1848—49 (*n*), the contributories were—

1. Persons entitled to shares of the assets or accruing profits of the company at the time of the presentation of the petition for winding it up; and,

2. Other persons liable to contribute to the payment of any of the debts, liabilities, or losses of the company.

But with respect to both classes, it was held that the obligation to contribute with others was the real test of liability to be put on the list of contributories. There might, therefore, be shareholders who were not contributories; *e.g.*, shareholders entitled to be indemnified by the company against all losses: and there might be contributories who were not shareholders, *e.g.*, persons who had simply agreed to take shares from the company. Direct liability to creditors was not, however, the test whereby to determine whether a person was or was not a contributory under the Acts of 1848—49: for a person may be liable to creditors, and yet not

(*k*) *Baird's case* [1899], 2 Ch. 593.

(*l*) See *infra*, class B.

(*m*) See *infra*, class B. This practice is warranted by § 38, cl. 3, and § 74.

(*n*) 11 & 12 Vict. c. 45, § 3.

be liable to contribute with other persons to the payment of those creditors; and a person may not be liable to the creditors at all, and yet may, as between himself and others who are liable to them, be bound to contribute with those others to the discharge of the creditors' demands (*o*).

2. Under the Companies Act, 1862.

The Companies Act, 1862, draws a distinction between,

1. Companies formed and registered under the Act, or under the repealed Acts of 1856—1858 (*p*).
2. Companies registered under the Act, or the Acts of 1856—1858, but not formed under it or them (*q*).
3. Unregistered companies (*r*).

1.) Companies formed under the Act.

1. With reference to companies of the first class, the Act declares that the term contributory shall mean every person liable to contribute to the assets of a company under the Act in the event of the same being wound up (*s*). In order to ascertain what persons are thus liable, recourse must be had not only to § 74 but also to sections 23, 38, and 76—78, the effect of which is apparently to make the following persons, and those only, contributories in the companies now under consideration, viz.,

1. Existing members (*t*), *i.e.*, members at the time of the commencement of the winding up (*u*).

2. Past members, *i.e.*, persons who were members and who have not ceased to be members for one year prior to the time above mentioned (*x*).

3. The legal personal representatives of such members and past members (*y*).

4. Their heirs and devisees (*z*).

5. Their assignees in bankruptcy (*a*).

6. Their husbands (*b*).

The third, fourth, and fifth classes are only liable to be put

(*o*) The dictum to the contrary in 1 Mac. & G. 315, is opposed to later views. See 1 De G. & S. 560, 563; 3 ib. 223, 265; 3 Mac. & G. 187; 1 De G. M. & G. 576, and 3 De G. & J. 421.

(*p*) See §§ 74 and 176.

(*q*) See §§ 177 and 196.

(*r*) § 200.

(*s*) § 74.

(*t*) § 38.

(*u*) See §§ 84 and 153.

(*x*) §§ 38 and 84.

(*y*) § 76.

(*z*) Ib.

(*a*) § 77.

(*b*) § 78.

on the list in their representative capacities, unless they themselves fall within one of the two first classes. The position of husbands has been greatly modified by the Married Women's Property Act, 1882, as will be seen hereafter.

Former members who have ceased to be members for a year or more before the presentation of the winding-up petition are not contributories at all. Former members who have ceased to be members within that time are liable to be made contributories in the event of the existing members being unable to satisfy their contributions (*c*); but even then past members are only liable in respect of debts and liabilities of the company contracted before they ceased to be members (*d*).

Observation on word "members."

From the above remarks it will be seen that in order to understand the exact signification of the term "contributory" as used in § 74, it is indispensable to understand accurately the meaning of the word "member" as used in § 38. To do this, however, will be found extremely difficult; for not only is the description of a member given in § 23 open to the remarks made upon it in an earlier part of this treatise (see pp. 163 and 164), but the register, which that description assumes to be correct, is liable to be rectified when the question of contributory or no contributory has to be determined (*e*).

2.) Companies registered but not formed under the Act.

2. As regards companies registered under the Act of 1862, or under the Acts of 1856—1858, but not formed under it or them, it seems, 1, that all persons are contributories who come within the meaning of that word as applied to companies formed and registered under the Act of 1862; 2, that all other persons are contributories in respect of the debts and liabilities of the company contracted prior to registration, who are liable at law or in equity to pay or contribute to the payment of any of such debts or liabilities, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves in respect

(*c*) § 38, cl. 3.

(*d*) Ib. cl. 2.

(*e*) §§ 98 and 35. *Ante*, pp. 77 *et seq.*, 165 *et seq.* And see *Arnot's case*, 36 Ch. D. 702; *Winstone's case*, 12 Ch. D. 239, and compare *Sander's case*, 20 Ch. D. 403, and *Great Britain Mutual Life Assurance Society*, 16 Ch. D. 246.

thereof, or to pay or contribute to the payment of the costs of winding up, so far as relates to such debts or liabilities (*f*). The provisions already noticed respecting representatives, heirs, devisees, assignees, and husbands, also apply to this last class of contributories (*g*).

3.) Unregistered companies.

3. With respect to unregistered companies, the Act declares that every person shall be a contributory who is liable at law or in equity to pay or contribute to the payment of any debt or liability of the company, or of any sum for the adjustment of the rights of the members amongst themselves, or of the costs of winding up (*h*). The representatives, heirs, devisees, assignees, and husbands of such persons are also contributories as above (*i*).

Liability to pay, &c.

Notwithstanding the words "liable at law or in equity to pay," &c., which occur in §§ 196 and 200, the only kind of liability in respect of which a person can be put on the list of contributories is a liability to contribute in the character of a member (*k*). Thus a transferor of shares who may be a debtor to the company in respect of calls due before the transfer, is not a contributory as a present member. Such a person ought not to be on the register of members; he is a mere debtor to the company (*l*). So, too, an officer of the company cannot be placed on the list of contributories in respect of a liability under § 10 of the Companies Winding-up Act, 1890 (*m*). Moreover, it would seem that no member of a company formed and registered under the Companies Act, 1862, as a limited company can be placed on the list of contributories in respect of any liability beyond the limit imposed by the Companies

(*f*) § 196, cl. 5. See, as to the application of the older authorities to this class of cases, *Luard's case*, 1 De G. F. & J. 533; *Ex parte Dixon's Executors*, 1 Dr. & Sm. 225.

(*g*) Ib., and §§ 74–78.

(*h*) § 200. See the last note but one.

(*i*) §§ 200 and 74–78.

(*k*) *British Nation Life Ass.*, 8 Ch. D. p. 708. For an instance of an equitable liability as member, see *Moore and De la Torre's case*, 18 Eq. 661, where members of an unregistered company were placed on the list in respect of sums they had represented to have been subscribed.

(*l*) *Ex parte Littledale*, 9 Ch. 257, and *ante*, p. 728.

(*m*) *Davies' case*, 45 Ch. D. 537; *British Nation Life Ass.*, 8 Ch. D. p. 708, a decision under the former section (§ 165) of the Companies Act, 1862, see *ante*, p. 940, note (*l*).

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Acts, although a further liability is imposed upon him by the company's articles of association (*n*).

Distinctions between the Acts of 1848–49 and the Act of 1862.

Although the above are the main provisions of the Companies Act, 1862, bearing directly on the question who are contributories and who not, that question by no means depends solely on the sections referred to.

Effect of rights of creditors.

In the first place, it must be borne in mind that creditors of companies registered under the Act of 1862, have no remedy against the members individually, except under the winding-up provisions of that Act. Moreover, the rights of creditors against contributories are greater than the rights of the company before the commencement of the winding up.

Oakes *v.* Turquand.

This was decided by the House of Lords in *Overend and Gurney's Company, Limited* (*o*), where it was held that persons, assumed to have been induced by fraud imputable to the company to take shares in it, and having therefore on this assumption, and as between themselves and the company, rights of rescission and indemnity, but who had not exercised those rights before the winding up commenced, ought to be on the list of contributories, in order that the creditors of the company might be paid (*p*).

Houldsworth *v.* City of Glasgow Bank.

Again, in *Houldsworth* v. *City of Glasgow Bank* (*q*), a shareholder induced to become such by the fraud of the company, and who on the authority of the last case was settled on the list of contributories, was held not entitled to prove for the damages he had sustained by reason of the fraud. It was assumed that he might have maintained an action for damages against the company if it had not been wound up.

(*n*) *Baird's case* [1899], 2 Ch. 593. But compare *Maxwell's case*, 20 Eq. 585, and *McKewan's case*, 6 Ch. D. 447, which, however, related to companies limited by shares governed by the Act of 1856, and *infra*, p. 1046. As to the limit of liability, see *infra*, sect. 14, sub-s. 4 of this chapter.

(*o*) *Oakes* v. *Turquand*, L. R. 2 H. L. 325, affirming 3 Eq. 576. See, also, *Tennent* v. *City of Glasgow Bank*, 4 App. Ca. 615; *Stone* v. *City and County Bank*, 3 C. P. D. 282.

(*p*) See, further, on this point, *Wiltshire Iron Co.* v. *Great Western Rail. Co.*, L. R. 6 Q. B. 101 and 776; and as to set-off, *ante*, pp. 1030 *et seq.*, and fraudulent preferences, *ante*, p. 901, and under § 165 of the Act of 1862 or § 10 of the Act of 1890, *ante*, pp. 940 *et seq.*

(*q*) 5 App. Ca. 317. See, also, *Addlestone Linoleum Co.*, 37 Ch. D. 191.

Liability of members after winding up.

It has, indeed, been said by very high authority, that even after a winding-up order the creditors of a company formed and registered under the Act of 1862, are creditors of the company only, and not of the contributories individually, and that the creditors can only reach the contributories through the company (*r*). But if this be so, it will follow that after a winding-up order the company, as a trustee for its creditors, has greater rights against its contributories than it had before (*s*).

One or other of these views must, it is submitted, be correct; any other appears inconsistent with the decisions before referred to, with the course of legislation on the subject of Joint Stock Companies, and with those provisions of the Act of 1862, which are introduced expressly for the benefit of creditors, *e.g.*, those provisions which relate to the register of shareholders, the rights of creditors to obtain winding-up orders, the effect of such orders, the rights of creditors under them, fraudulent preference and set-off.

Burgess's case.

Nay, more, the position of shareholders in companies, whether solvent or insolvent, is very different after an order to wind up from what it was before the order. This was pointed out by Jessel, M. R., in an admirable judgment in *Burgess's case* (*t*), and must never be lost sight of.

Effect of power to rectify the register.

Another circumstance which renders it important to be careful before relying on the older decisions on the question of contributories, as authorities under the Act of 1862, is the power given to the Court to rectify the company's register of members (*u*). This power renders the actual state of the company's register of little or no consequence if it is shown to be wrong.

(*r*) See *Ship's case*, 2 De G. J. & Sm. 544; *Re Duckworth*, 2 Ch. 578; *Webb* v. *Whiffin*, L. R. 5 H. L. p. 734, *per* Lord Cairns.

(*s*) See Lord Selborne's observations in *Black & Co.'s case*, 8 Ch. 254 (at pp. 261, 262), and *Chapman and Barker's case*, 3 Eq. 361.

(*t*) *Burgess's case*, 15 Ch. D. 507, where shares had been taken on the faith of a fraudulent prospectus, and their holders were held to be contributories, although the assets exceeded the debts and costs.

(*u*) See §§ 98 and 35, and *ante*, p. 165. This power was first conferred by 19 & 20 Vict. c. 47, § 25. See as to mandamus, &c., *ante*, pp. 79 and 811.

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Alterations in status after commencement of winding up.

A third point which it is necessary to bear in mind when applying the older decisions to modern cases, is the power of the Court to sanction the registration of transfers after the commencement of the winding up. This subject will be considered hereafter, when treating of the position of persons who have ceased to hold shares in the company, and it will then be seen that under the older Acts, sellers of shares were held to be contributories under circumstances which, if they were now to occur, would render the buyers contributories in their stead.

Classification of contributories.

Contributories are primarily divisible into three classes, viz.: 1, contributories as present members; 2, contributories as past members; 3, their respective representatives.

Present members.

Persons who are contributories as present members are divisible into four classes, viz.:—

1. Duly constituted shareholders.

2. Persons who are estopped from denying that they are shareholders.

3. Persons who are bound by agreement to become shareholders.

4. The representatives of persons belonging to one or other of these classes.

Past members.

Persons who are contributories as past members are those who would have been contributories as present members if they or those whom they represent had not ceased to hold shares before the commencement of the winding up.

A. list.

B. list.

In practice, the contributories as present members are settled on what is called the A. list; whilst the contributories as past members are settled on what is called the B. list.

As regards present members there does not appear to be any substantial difference between companies formed and registered under the Companies Act, 1862, and other companies (*x*); but as regards past members there is a very material difference, as will be seen hereafter.

(*x*) See *Ex parte Littledale*, 9 Ch. 257. But compare *Baird's case*, [1899], 2 Ch. 593, with *Maxwell's case*, 20 Eq. 585, and *McKewan's case*, 6 Ch. D. 447, and see *ante*, p. 1044.

It is proposed first to investigate the general principles applicable to the first three classes, and then to notice their application to special cases of difficulty. The 4th class, and lastly Past members, will follow and complete the subject.

A. Contributories as present members.

1. *Duly constituted shareholders.* (See Bk. I., cc. 2 and 4.)

Subject to one or two exceptions all persons who, at the time of the commencement of the winding up of a company (*y*), are duly constituted shareholders therein, are contributories in it. It is immaterial whether the persons in question were the original founders of the company, or whether they have become shareholders by a direct allotment of shares to themselves, or whether they have become shareholders by a transfer of shares previously held by some one else. These general propositions require no comment. They apply to persons who are made shareholders by special Acts of Parliament (*z*); to all classes of members and shareholders where there are several in the same company (*a*). The particular cases in this class will be found under the heads 5 to 11, and under head B.

The exceptions are persons under disability and persons like ambassadors (*b*), and holders of fully paid-up shares, who are not liable to any call or contribution and who therefore cannot be settled on the list against their will although they are entitled to be on the list to obtain their share of any ultimate surplus there may be.

2. *Persons who are estopped from denying that they are shareholders.*

Persons estopped from denying that they are shareholders.

It has been already seen that persons who have not complied with all prescribed formalities may be estopped from denying that they are shareholders (*c*).

(*y*) *Ante*, p. 897.

(*z*) *Kincaid's case*, 11 Eq. 192; *Forbes' case*, 19 ib. 353; *O'Brien's case*, Ir. Rep. 11 Eq. 422.

(*a*) *South London Fish Market Co.*, 39 Ch. D. 324; *Winstone's case*, 12 Ch. D. 239. Compare *Great Britain Mutual Life Assurance Society*, 16 ib. 246.

(*b*) See *Magdalena Steam Co.* v. *Martin*, 2 E. & E. 94; of course, they can receive nothing without being charged in account with calls.

(*c*) See on this subject, *ante*, pp. 65 *et seq.*

Even before there was any power given to the Court to rectify a company's register of shareholders, it was settled that all persons who, when a petition for winding up a company was presented, were estopped from denying that they were shareholders in that company, were also contributories in it, unless they could show good reason to the contrary. It is wholly immaterial whether such persons are or are not properly described in the company's register of shareholders (*d*), or whether they are or are not shareholders in the strict sense of the term, and, as such, liable, in the case of an unregistered company, to be sued by creditors of the company.

Straffon's Executors' case.

Straffon's Executors' case (*e*) is a leading authority on this head. There the provisions of a company's deed of settlement required that all transfers of shares should be made in a particular manner, with the consent of the directors testified in a particular manner, and that the transferee should execute the company's deed of settlement. It was also expressly declared that no transferee should be entitled to any of the privileges of a shareholder until he had executed the deed of settlement. A Mr. Straffon bought various shares which were, in fact, transferred to him, and in respect of which certificates and dividends were, in fact, given and paid to him. The shares had never been transferred to him in the manner prescribed by the company's deed of settlement; nor had he ever executed that deed. He had, however, executed a sufficient deed in respect of some of the shares, but not in respect of the others; and his executors had been returned to the stamp office as shareholders in respect of all his shares. On the winding up of the company after his death, his executors were made contributories in respect of all his shares; it being perfectly clear that, although the prescribed formalities had not been

(*d*) *Yelland's case*, 5 De G. & S. 395, and others of that class noticed under the next head (3).

(*e*) 1 De G. M. & G. 576, and 4 De G. & S. 256. See, also, *Ex parte Dixon's Executors*, 1 Dr. & Sm. 225; *Maguire's case*, 3 De G. & S. 31; *Sanderson's case*, ib. 66, and 3 H. L. 698; *Gordon's case*, 3 De G. & Sm. 249; and the following cases arising in the liquidation of the City of Glasgow Bank, *Bell and Lang's case*, 4 App. Ca. 547; *Ker's case*, ib. 549 and 598, and *Cuninghame* v. *City of Glasgow Bank*, ib. 607.

rigorously complied with, enough had been done to estop both the company and Mr. Straffon from denying that he was virtually a shareholder in the company in respect of them all.

Persons who have acted and been treated as shareholders, although they have not complied with formalities.

So an irregularity in a transfer of shares will not preclude the transferee from being a contributory if the transfer has been registered (*f*). Indeed, it is now clearly settled, as a general rule, that where a person has acted, and been treated as a shareholder, he will be a contributory, notwithstanding the non-observance of those formalities which, according to the strict letter of the company's deed or articles of association, ought to be complied with before a person is entitled to share profits, or enjoy the other rights or privileges of a shareholder (*g*).

Qualifications of these principles.

In applying this principle, however, care must be taken to ascertain whether the conduct relied upon is referable to an agreement to take shares or not; for whilst on the one hand if there be an agreement binding or entitling a person to take shares, his conduct will effectually preclude him from taking advantage of any informalities or irregularities, and even from repudiating the agreement if it be voidable at his option (*h*); yet if he has neither become nor agreed to become a shareholder, the circumstance that he has acted as a shareholder will not necessarily render him a contributory. Thus it was decided, under the old winding-up Acts, that a person who had never become a shareholder, and had never agreed to take shares, did not become a contributory in respect of shares improperly allotted to him, although he had executed the

(*f*) *Weikersheim's case*, 8 Ch. 831, where the registration was somewhat irregular. See, also, *Bush's case*, 6 Ch. 246, and *Murray* v. *Bush*, L. R. 6 H. L. 37, where a person who had irregularly transferred his shares was held not to be a contributory, and compare that case with *Keene's Executors' case*, 3 De G. M. & G. 272; *Brown's case*, 19 Beav. 97; *Henderson's case*, ib. 107, where persons who had transferred their shares irregularly were held contributories.

(*g*) See, in addition to the cases cited in the last two notes, *Ex parte Contract Corporation*, 3 Ch. 105; *Challis' case*, 6 Ch. 266; *Leishman* v. *Cochrane*, 1 Moore, P. C. N. S. 315; *Robinson's Executors' case*, 15 Jur. 438, and on appeal, 2 De G. Mac. & G. 517, where no shares were really taken, but dividends were paid upon them; *Bernard's case*, 5 De G. & S. 283.

(*h*) As in *Hindley's case* [1896], 2 Ch. 121, according to one view of the meaning of the underwriting agreement there in question.

company's deed of settlement (*i*); or had attended meetings of shareholders (*k*); and even under the Companies Act, 1862, a person registered as the holder of shares illegally issued pursuant to a void scheme for amalgamation has been held not to be a contributory, although he has acted as a shareholder and a director (*l*).

The application of these principles to directors who have acted as such without being properly qualified, will be examined hereafter under head (6).

Statement of intention.

Lastly, it must be remembered that a statement of an intention to become a shareholder does not estop a person from showing that he has never carried his intention into effect, and is not a shareholder (*m*).

3. *Persons who are bound by agreement to become shareholders.*

What constitutes a valid agreement with a company to take shares, and what not, has been examined already, see Book I., c. 1.

Speaking generally, a person who has agreed with the company to become a member of it is a contributory whether he is actually a member or not; and, on the other hand, a person who is not a member, and has not agreed with the company to become one, is not a contributory. This will be seen hereafter (*n*).

By agreement with members.

The position of persons who have agreed to take shares not from the company but from persons who are already shareholders will be examined under the head of Past Members. It has already been seen that transferees of shares who have been accepted by the company as shareholders, are contributories, although they may not have complied with all those formalities which ought to have been observed in the transfer (*o*): and it will be seen hereafter that transferees of shares who have not been accepted by the company as shareholders were not contributories under the older winding-up Acts, and

(*i*) As in *Coleman's case*, 1 De G. J. & Sm. 495, noticed *infra*, p. 1073.

(*k*) As in *Bunn's case*, 2 De G. F. & J. 275, *infra*, p. 1073.

(*l*) As in *Stace and Worth's case*, 4 Ch. 682, *infra*, p. 1066. See, also, *Smith's case*, 4 Ch. 611.

(*m*) *Moore Brothers & Co. Ld.* [1899], 1 Ch. 627, and compare the representation made in *Moore and De la Torre's case*, 18 Eq. 661.

(*n*) *Infra*, head 4 *a*), p. 1059 *et seq.*

(*o*) *Ante*, p. 1049.

are not contributories under the Companies Act, 1862, except in those cases in which there is power to rectify the company's register (*p*).

By agreement with company.

With respect to persons who have agreed to take shares directly from the company, it will be convenient to distinguish unconditional from conditional agreements. The latter will be separately considered hereafter (*q*).

Further, in dealing with cases resting on agreement, it is important to distinguish a concluded agreement, whether simple or conditional, from that which is in truth no agreement, in consequence of there not being a final assent by both parties to the same terms (*r*).

a) Allottees and others taking shares in formed companies.

The following are the leading older authorities for the proposition that a person who agrees to take shares from a company is a contributory :—

Yelland's case, 5 De G. & S. 395, affirmed on appeal, 16 Jur. 509, where the allottee had not executed the company's deed.

Sharpus' case, 3 De G. & S. 49.

Mansfield's case, 3 De G. & S. 58, and on appeal, 2 M. & G. 57.

In these the allotment was made before the company was completely registered. The allottees did not execute the deed, and the proposed capital was never raised. See, also, *Lyon's case*, 35 Beav. 646.

Cookney's case, 26 Beav. 6, and 3 De G. & J. 170.

Barton's case, 4 Drew. 535, and on appeal, 4 De G. & J. 46.

In these the applications for shares were verbal only, and they were allotted ; but nothing more was done.

Hawkins' case, 2 K. & J. 253 (a cost-book company).

Bird's case, 1 Sim. N. S. 47.

Also illustrate the same principles.

More modern authorities to the same effect abound in the books. Thus in *The Licensed Victuallers' Mutual Trading Association* (*s*), a promoter of a company who had agreed to *underwrite* 10,000 shares for a commission of 15 per cent. was held a contributory in respect of 8,500 shares which he had not been able to induce other persons to take.

(*p*) See under head B., pp. 1113 *et seq.*

(*q*) *Infra*, head 4 *d*), pp. 1070 *et seq.*

(*r*) See *ante*, pp. 15 *et seq.* Compare *Pentelow's case*, 4 Ch. 178, with *Peek's case*, ib. 532. And see the judgment of L. J. Cotton in *Arnot's case*, 36 Ch. D. 702.

(*s*) *Ex parte Audain*, 42 Ch. D. 1. See, too, *Hindley's case* [1896], 2 Ch. 121. Compare *Ormerod's case* [1894],

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Onus of proof.

If a person is admittedly a contributory in respect of some shares in a company governed by the Companies Act, 1862, the allotment book of the company will be *primâ facie* evidence against him; if, therefore, he disputes the validity of an allotment of any other shares entered in that book as having been allotted to him, the onus of proof will lie on him (*t*).

Agreement to take shares need not be in writing.

Although an agreement to take shares need not (in general) be in writing, there are exceptions to this rule. By the statute 30 Vict. c. 23, relating to marine insurances, all agreements for such insurances were required to be in writing, and to be stamped; and consequently the members of a mutual marine insurance company, which did not issue stamped policies, were not contributories (*u*).

No allotment.

Moreover, if a person has agreed to take shares, he will be a contributory, even although there may have been no allotment (*x*); or he may have no notice of it (*y*). Allotment and notice are in truth only material where there is no agreement without them. In the ordinary case of an application for shares, there is no agreement in the absence of allotment and notice of it; but there may well be a binding agreement without either of them (*z*).

Alteration in value of shares before allotment.

An allotment following an application for shares will, unless otherwise expressed at the time, be treated as an allotment of such shares as are applied for. Consequently, if after the application, and before the allotment, the nominal value of

2 Ch. 474, where the offer was held to be conditional on the underwriter being called upon to subscribe, and the condition had not been fulfilled. In all these cases shares had been allotted. For other cases on the construction of underwriting agreements, see *infra*, p. 1061, notes (*f*), (*g*), and (*h*); see, too, *ante*, p. 16.

(*t*) Comp. Act, 1862, § 154. *Ex parte Kennedy*, 44 Ch. D. 472, where this *onus* was not discharged.

(*u*) *Smith's case*, 4 Ch. 611. Compare *Blyth & Co.'s case*, 13 Eq. 529; *Martin's claim*, 14 Eq. 148. Marine policies can now be stamped for the purpose of production in evidence after their execution on payment of a penalty, see 54 & 55 Vict. c. 39, §§ 95—97, but a written policy is still necessary, except in certain cases, see ib. § 93. As to stamps on policies with a continuation clause, see 1 Ed. 7, c. 7, § 11.

(*x*) *Bird's case*, 4 De G. J. & Sm. 200.

(*y*) *Adam's case*, 13 Eq. 474; *Harward's case*, 13 Eq. 30; *Sidney's case*, ib. 228; *Fowler's case*, 14 ib. 316. See, also, *Richards* v. *Home Assur. Assoc.*, L. R. 6 C. P. 591, where an agent applied for shares, and was registered as their holder.

(*z*) See, as to this, *ante*, pp. 15 *et seq.*

the shares has been altered, and the allottee has no notice of the alteration, he will be a contributory in respect of such shares as he applied for, but not in respect of them as altered (*a*).

Agreement to take fully paid-up shares.

A person who has only agreed to take fully paid-up shares cannot be treated as a contributory in respect of shares not paid up (*b*).

Agreement to take shares at a future time.

Barrett's case.

An agreement to take shares at a future time will not render a person a contributory, if the winding up of the company has commenced before that time arrives (*c*); but if shares are agreed to be taken at once, the person agreeing to take them will be a contributory, although they are not to be paid for until a future day, and the certificates for them are not to be delivered until payment (*d*).

Option to pay in cash or shares.

Again, where a person has agreed to take cash or shares at the option of the company in payment of his claims against the company, and he has not received either cash or shares, he cannot be compelled to take shares after the company has been ordered to be wound up; and he is entitled to rank as a creditor in respect of what the company may owe him (*e*).

Scripholders.

So also in winding up companies in which there are shareholders and scripholders, and in which the scripholders are entitled to become shareholders, but are not bound so to do, so long as they remain scripholders, as distinguished from shareholders, they are not contributories (*f*).

Agreements not acted upon.

An agreement to take shares which has not been acted upon for so long that neither party can enforce it against the other will not render the person who agreed to take them a contributory. This follows from the ordinary doctrines applicable

(*a*) *Gustard's case*, 8 Eq. 438, where the allottee was held to be a contributory for them. Compare this with the cases noticed *ante*, pp. 22 *et seq.*

(*b*) *Macdonald, Sons & Co.* [1894], 1 Ch. 89; *Arnot's case*, 36 Ch. D. 702. See *infra*, pp. 1075 *et seq.*, as to paid-up shares. See, too, as to shares issued at a discount, *Ex parte Sandys*, 42 Ch. D. 98, and *infra*, p. 1078.

(*c*) *Barrett's case*, 2 Dr. & Sm. 415, and 3 De G. J. & Sm. 30.

(*d*) Ib. The case turned on the true construction of the correspondence.

(*e*) *Sharon's claim*, W. N. 1866, 231. See, too, on the rights of the parties under an agreement with alternative stipulations to pay in cash or shares in a company to be formed, *McIlquham* v. *Taylor* [1895], 1 Ch. 53.

(*f*) See scripholders, *infra*, head 8, p. 1096.

to the specific performance of agreements; and where a person in this position sought to be put on the list in order to obtain a share of surplus assets, he was held not entitled to be on it (*g*). So it is apprehended he could not have been made a contributory against his will if there had been a deficiency (*h*).

Agreements rescinded.

An agreement to take shares which has been duly rescinded before the commencement of the winding up, will not render the party to it a contributory unless it be as a past member. But, *primâ facie*, directors have no more power to rescind an agreement to take shares than they have to accept a surrender of them when taken; and there are numerous authorities to show that persons who have agreed to take shares are contributories as present members, although the directors have subsequently agreed to relieve them from their obligation (*i*). These cases, however, will be more conveniently noticed when treating of persons who have ceased to be members (*k*).

Voidable and void agreements.

An agreement which is void cannot *per se* render a person a contributory; but an agreement which is voidable at his option may do so. This subject will be alluded to hereafter (*l*).

b) Allottees and others taking shares in contemplated companies.

Allottees of shares and scrip in abortive companies.

An abortive company, *i.e.*, an unregistered association of individuals engaged in the formation of a company, and not succeeding in their attempts to form it, might be wound up under the Acts of 1848 and 1849 (*m*). But persons engaged in the formation of a company are neither partners nor *quasi*-partners, nor is each the agent of the others for doing that which may be necessary to start the company (*n*). It follows from this, that if an abortive unregistered company is being wound up, a person who has done nothing more than act as a promoter, without rendering himself liable with the other

(*g*) *Ex parte London Bank of Scotland*, 12 Eq. 268.

(*h*) *Nicol's case*, 29 Ch. D. 421. Compare *Sidney's case*, 13 Eq. 228, where a person who signed a company's memorandum of association was put on the list after a delay of five years.

(*i*) See, for example, *Adams' case*, 13 Eq. 474. And compare *Nicol's case*, *Tufnell and Ponsonby's case*, 29 Ch. D. 421.

(*k*) See *infra*, class B, pp. 1113 *et seq.*

(*l*) See under head 4, p. 1058.

(*m*) *Ante*, p. 841.

(*n*) See Partn. p. 18.

promoters, to third parties, or to those others in respect of liabilities incurred by them, is not a contributory.

Liability of subscribers to contribute.

It was at one time thought that there was an equitable, as distinguished from a legal obligation on the part of every promoter of a company towards the other promoters, to contribute with them towards the discharge of debts incurred by them in the prosecution of their common design; but it has long been settled that a promoter, or subscriber, to an abortive company is not liable to contribute to the liquidation of debts or expenses which have been incurred without his authority, or which he has not agreed to share. Unless, therefore, a person has agreed to share, or has rendered himself directly liable with others to pay, the debts incurred in the attempt to form an abortive company, he will not be a contributory on the winding up of that company (*o*).

Upfill's case.

The non-liability of a mere promoter of a company to be made a contributory, unless he has done something besides act with others in getting up a company, was established comparatively early; but it was nevertheless decided by the House of Lords, in *Upfill's case* (*p*), that if a promoter of a company agreed to accept shares in the company when formed, he ought to contribute to the expenses incurred in attempting to form it. The impossibility, however, of upholding this decision was felt as soon as attention was drawn to it; and although it was followed for a time, it was repudiated by the House of Lords itself in *Bright* v. *Hutton* (*q*), which has ever since been the leading authority upon the present subject.

Many cases had been decided on the authority of *Upfill's case*, and they, of course, fall with it. With reference, therefore, to the subject now under discussion, it is necessary to separate the cases decided before, from those decided after the reversal of *Upfill's case*. But it is to be observed, that cases

(*o*) See *Norris* v. *Cottle*, 2 H. L. C. 647, affirming *Ex parte Cottle*, 2 Mac. & G. 185; *Bright* v. *Hutton*, 3 H. L. C. 341; *Hutton* v. *Thompson*, and *Norris* v. *Cooper*, ib. 161. See, too, *Hamilton* v. *Smith*, 7 W. R. 173.

(*p*) *Hutton* v. *Upfill*, 2 H. L. C. 674.

(*q*) 3 H. L. C. 341. But see as to the jurisdiction of the House of Lords to overrule a previous decision of their own, *London Street Tram. Co.* v. *London County Council* [1898], A. C. 375.

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decided before such reversal, and in which promoters or subscribers were held *not to be* contributories, are still entitled to weight. It is only those which decided such persons *to be* contributories that must now be disregarded.

Cases falling with Upfill's case.

The following cases must be considered as overruled (directly or indirectly) by *Bright* v. *Hutton*, 3 H. L. C. 341:—

Upfill's case, 2 H. L. C. 674.

Besley, Ex parte, 2 Mac. & G. 176. This case occurs three times in the books. It was first decided by Vice-Chancellor Knight Bruce (*Besley's case*, 3 De G. & S. 224), who held that Besley was not a contributory. This decision was appealed against, and was reversed by Lord Cottenham (2 Mac. & G. 176). But the appeal was reheard by Lord Truro, who affirmed the decision of the Vice-Chancellor (3 Mac. & G. 287). The case, as reported in 3 De G. & S. 224, and 3 Mac. & G. 287, is still law.

Bright's case, 1 Sim. N. S. 602. This was reversed on appeal (3 H. L. C. 341).

Brittain, Ex parte, 1 Sim. N. S. 281, decided reluctantly on the authority of *Upfill's case*.

Hole's case, 3 De G. & S. 241, decided on the authority of *Ex parte Besley*, 2 Mac. & G. 176.

Markwell's case, 5 De G. & S. 528, decided on the authority of *Upfill's case*, but after the decision of *Bright* v. *Hutton*. It cannot, however, be considered law. See *Ex parte Capper*, 1 Sim. N. S. 178, and *Carrick's case*, 1 Sim. N. S. 505.

Morrison, Ex parte, 15 Jur. 346, and 20 L. J. Ch. 296, decided on the authority of *Upfill's case*, and in effect overruled by *Sharp and James's case*, 1 De G. M. & G. 565.

Nicholay's case, 15 Jur. 420, decided on the authority of *Upfill's case*.

Sichell, Ex parte, 1 Sim. N. S. 187, decided reluctantly on the authority of *Upfill's case*.

Studley, Ex parte, 14 Jur. 539. This case is very shortly reported, but it seems inconsistent with such cases as *Hall's* (3 De G. & S. 214), *Stock's* (22 L. J. Ch. 218) and *Carrick's* (1 Sim. N. S. 505).

Result of authorities.

Upon the principles which are now settled to be applicable to the case of an abortive unregistered company, it may be taken:

Subscribers to abortive companies not contributories.

1. That a mere subscriber to or allottee of scrip in an abortive company is not, by virtue of his subscription, or acceptance of scrip, a contributory on the winding up of the company, whether he has paid his deposit (*r*) or not (*s*).

(*r*) As in *Maudslay and Field's case*, 17 Sim. 157; *Ex parte Beardshaw*, 1 Drew. 226. See, too, *Ex parte Walstab*, 20 L. J. Ch. 58, where the deposit had been paid and recovered back.

(*s*) As in *Hutton* v. *Thompson*, and *Norris* v. *Cooper*, 3 H. L. C. 161; *Ex parte Capper*, 1 Sim. N. S. 178; *Carrick's case*, ib. 505; *Ex*

Provisional committee men not contributories.

2. That such a person does not become a contributory by being one of the committee from which the scheme emanates, and by which it is encouraged; or, in other words, by being what is commonly called a promoter of the company (*t*). This holds, even although he may have subscribed something towards the expenses, if he did so under the erroneous supposition that he was liable for them (*u*), or merely for the sake of peace (*x*); so, although he may have concurred in the appointment of persons, and have incurred liability by so doing, if all liability on that score is at an end (*y*); so, although he may have been party to the appointment of a managing committee, by which debts still unpaid have been incurred (*z*); so, although his name may have been put on that committee, if he never assented to join it, and he never acted on it (*a*).

A fortiori, subscribers who have not agreed to take shares.

3. That, *a fortiori*, subscribers to and promoters of an abortive company are not, as such, liable to be made contributories on its winding up, if they never have, in fact, entered into a binding agreement to take shares. Even before *Upfill's case* was reversed, this proposition was well established (*b*).

4. That if persons are actively engaged in forming a company, if they act as a body, and as a body incur debts for which they are all liable, if not directly, at all events as between each other, then they form a company or association which may be wound up, and on its winding up they will be

parte Hirschel, 15 Jur. 942. See, too, the cases in the next seven notes.

(*t*) *Bright* v. *Hutton*, 3 H. L. C. 341, reversing *Bright's case*, 1 Sim. N. S. 602; *Norris* v. *Cottle*, 2 H. L. C. 647, affirming *Ex parte Cottle*, 2 Mac. & G. 185. See, too, *Maitland's case*, 3 Giff. 28; *Ex parte Roberts*, 2 Mac. & G. 192, and 14 Jur. 539; *Ex parte Clarke*, 20 L. J. Ch. 14.

(*u*) *Ex parte Besley*, 3 Mac. & G. 287, affirming *Besley's case*, 3 De G. & S. 224; *Hall's case*, 3 De G. & S. 214.

(*x*) *Ex parte Stocks*, 22 L. J. Ch. 218; *Hall's case*, 3 De G. & S. 214; *Carrick's case*, 1 Sim. N. S. 505; *Ex parte Roberts*, 1 Drew. 204; *Tanner's case*, 5 De G. & S. 182.

(*y*) *Carrick's case*, 1 Sim. N. S. 505; *Ex parte Hight*, 1 Drew. 485.

(*z*) *Tanner's case*, 5 De G. & S. 182.

(*a*) *Ex parte Roberts*, 1 Drew. 204. See, too, *Ex parte Osborne*, 15 Jur. 72. Compare *Spottiswoode's case*, 6 De G. M. & G. 345.

(*b*) See *Mathew's case*, 3 De G. & S. 234; *Carmichael's case*, 17 Sim. 163; and *Onions's case*, 1 Sim. N. S. 394.

contributories, whether they have actually subscribed for shares or not (c).

5. That persons who, without being actively engaged in forming a company, agree not only to take shares in it, but also to share the expenses incurred in forming the company, are, on its winding up, liable to be made contributories (d).

Application of these rules to modern companies.

The writer is not aware of any case having arisen under the Companies Act, 1862, and in which the above rules have been adverted to. The reason of this is that there is no recent instance of an order to wind up an unregistered association of promoters of a company. At the same time, such an association, at least if consisting of less than twenty persons, might be legally formed, and if of more than seven persons, might be wound up (e); and if such an event should occur, the principles and rules followed under the older Acts would apply; subject, however, to this qualification, that liability to creditors is now a ground for being put on the list, which was not the case under the older Acts (f).

4. *On the repudiation of shares after the commencement of the winding up.*

A person who is sought to be made a contributory in respect of shares which he has agreed to take or which may be registered in his name, may be entitled to repudiate them on various grounds. But it by no means follows, that because he might have repudiated them before the winding up commenced, he can repudiate them afterwards. The leading principles applicable to this subject appear to be as follows:

1. Shares placed in a person's name pursuant to an alleged agreement, which is in truth no agreement, may be repudiated by him after the winding up has commenced, unless he has chosen to accept them on the terms on which they have been placed in his name (g).

(c) *Norbury's case*, 5 De G. & Sm. 423; *Sharp and James' case*, 1 De G. M. & G. 565; *Pearson's Executors' case*, 3 De G. M. & G. 241; *Spottiswoode and Amsinck's case*, 6 De G. M. & G. 345. See, also, *Bowen and Martin's case*, 20 L. J. Ch. 856, and *Ex parte Apps*, 18 L. J. Ch. 409.

(d) See the last note.

(e) See Companies Act, 1862, §§ 4 and 199.

(f) Ib. § 200.

(g) See *infra*, head a), p. 1059.

2. Shares which the company has no power to issue, can be repudiated after the winding up has commenced (*h*).

3. Shares placed in his name under an agreement which is voidable, *e.g.*, on the ground of fraud (*i*), or the non-performance of a condition (*k*); cannot be repudiated after the winding up has commenced.

4. Shares which a person has agreed to take, but which have not been placed in his name, and in respect of which he is not a shareholder at the commencement of the winding up, may be repudiated by him if he can show that for any reason the agreement is not binding on him (*l*).

5. Shares which have been allotted to an applicant in contravention of the provisions contained in section 4 of the Companies Act, 1900, may be repudiated by him within one month after the holding of the statutory meeting, whether the company is in course of being wound up or not (*m*).

a) Repudiation on the ground of no agreement.

Cases in which a person has neither become nor bound himself by agreement to become a shareholder.

By way of contrast with the decisions noticed under the last head, those cases will now be adverted to, in which it has been held, that a person is not a contributory, he not having become a shareholder or agreed to become one, and there being no other grounds on which to hold him a contributory.

Sureties, &c.

Persons who are merely sureties to a company for the payment of calls by shareholders are not contributories (*n*). It will be seen hereafter that *cestuis que trustent* are not contributories (*o*).

Admissions.

A person who has never agreed to take shares and has never acted or been treated as a shareholder, but who by mistake has admitted, even under seal, that he is a shareholder is not a contributory (*p*).

A person who agrees to place shares does not agree to take them himself, and he is not a contributory (*q*).

(*h*) See *infra*, head *b*), p. 1065.

(*i*) See *infra*, head *c*), p. 1067.

(*k*) See *infra*, head *d*), p. 1070.

(*l*) See *infra*, head *d*), p. 1070.

(*m*) Comp. Act, 1900, § 5; see *ante*, pp. 41 *et seq.*

(*n*) *Harrison's case*, 6 Ch. 286; *Lee and Moor's case*, 5 Eq. 368.

(*o*) See *infra*, head 9.

(*p*) *Empson's case*, 9 Eq. 597. See, also, *Davies's case*, 4 De G. F. & J. 78.

(*q*) *Gorrissen's case*, 8 Ch. 507. Otherwise if he underwrites so many shares, *ante*, p. 1051.

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Effect of being on register.

A person who is entered on the register of shareholders without due authority is not a contributory, unless he has precluded himself from denying the propriety of the entry (*r*). This he may do by express ratification or by acting as a shareholder (*s*). Even where an applicant for shares authorised them to be registered in his name, and executed a blank transfer of them before allotment, the subsequent entry of his name in the register was held not to affect him, as he had no notice of such entry or of the allotment (*t*).

Applicants for shares.

With respect to applicants for shares, the following propositions follow, from the principles explained in Bk. I. c. 1, § 1, where the requisites of an agreement to take shares were examined (*u*).

1. No allotment.

1. If shares have been applied for and the deposit on them has been paid, and a receipt has been given for the money, but the shares have never been allotted, the applicant will not be a contributory, although the application may have been, in form, an agreement by him to accept the shares applied for or any less number which might be allotted (*x*). If indeed there is some other evidence clearly showing that the application had been accepted, the fact that there was no formal allotment will be immaterial (*y*).

2. No notice of allotment.

2. If an application for shares is followed by allotment and entry on the register, but the allottee is not informed of these facts, he will not, without more, be a contributory (*z*). But direct formal notice is not necessary; and notice may be inferred from conduct, and may even be wholly dispensed with (*a*).

(*r*) See *Hallmark's case*, 9 Ch. D. 329; *Somerville's case*, 6 Ch. 266; *Gorrissen's case*, 8 Ch. 507; *Wynne's case*, ib. 1002; *Beck's case*, 9 Ch. 392; *Pellatt's case*, 2 Ch. 527; *Baily's case*, 5 Eq. 428, and 3 Ch. 592; *Ward's case*, 10 Eq. 659.

(*s*) See *Hindley's case* [1896], 2 Ch. 125, where the meaning of the agreement was doubtful, but shares had been accepted under it without inquiry. See also the cases on the effect of varying from the prospectus, *infra*, pp. 1062 *et seq.*

(*t*) *Ward's case*, 10 Eq. 659.

(*u*) *Ante*, pp. 15 *et seq.*

(*x*) *Best's case*, 2 De G. J. & Sm. 650.

(*y*) See *Adam's case*, 13 Eq. 474; *Bird's case*, 4 De G. J. & Sm. 200.

(*z*) *Gunn's case*, 3 Ch. 40; *Ward's case*, 10 Eq. 659, and others cited *ante*, pp. 16 and 17; *Bloxam's case*, 4 De G. J. & Sm. 447, *contra*, turned on its own special circumstances; see *ante*, p. 18.

(*a*) See *Adam's case*, 13 Eq. 474, and the cases collected *ante*, pp. 17

3. If an application for shares has been revoked before it has been accepted, the applicant will not be a contributory, although shares may afterwards be allotted to him (*b*). The revocation may be verbal (*c*). But revocation after notice of allotment has been posted is too late (*d*). It has also been decided that a revocation after acceptance by an agent without authority, but whose acceptance is ratified after the revocation, is too late (*e*).

3. Application for shares revoked.

An authority given to an agent for valuable consideration to apply for shares in the name of the principal, cannot be revoked if it was given for the purpose of securing a benefit to the agent (*f*); but an offer to give such an authority may be revoked before it has been accepted by the agent and notice of such acceptance has been given to the principal (*g*); the notice of acceptance may, however, be inferred or dispensed with (*h*).

4. If an application for shares is not accepted within a reasonable time, a subsequent acceptance will not render the applicant a contributory unless he has assented to it (*i*), or is estopped from denying he has so assented (*k*); and this applies as well to directors and to persons who take an active part in getting up the company as to others (*l*).

4. Allotment too late.

5. If a person applies for shares in a company under a mistake as to its identity, and the directors allot him shares knowing of his mistake, and having deceived him as to the identity of the company, there is no agreement, and he is not a contributory although registered (*m*).

5. Mistake in identity of company.

and 18, and *infra*, note (*h*). See, also, the cases relating to directors, *infra*, head 6, pp. 1083 *et seq.*

(*b*) *Wallace's case* [1900], 2 Ch. 671; *Ritso's case*, 4 Ch. D. 774, the case of a director; *Gledhill's case*, 3 De G. F. & J. 713, and others of that class noticed *ante*, pp. 15 and 16.

(*c*) *Truman's case* [1894], 3 Ch. 272.

(*d*) *Harris's case*, 7 Ch. 587; *Wall's case*, 15 Eq. 18, *ante*, p. 16.

(*e*) *Bolton Partners* v. *Lambert*, 41 Ch. D. 295; *Ex parte Badman*, 45 Ch. D. 16. But see *Fleming* v. *Bank of New Zealand* [1900], A. C. p. 587; and Fry on Spec. Perf., 3rd ed., p. 711.

(*f*) *Carmichael's case* [1896], 2 Ch. 643.

(*g*) *Ex parte Stark* [1897], 1 Ch. 575.

(*h*) *Bultfontein Sun Diamond Mine*, 12 Times, L. R. 461; and *Ex parte Stark* [1897], 1 Ch. 575.

(*i*) *Mathew's case*, 3 De G. & Sm. 234, and others of that class noticed *ante*, p. 18.

(*k*) See *Hindley's case* [1896], 1 Ch. 121.

(*l*) *Ritso's case*, 4 Ch. D. 774; *Carmichael's case*, 17 Sim. 163.

(*m*) *Baillie's case* [1898], 1 Ch. 110.

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6. Applicant and allottee different persons. Mallorie's case.

6. If a person applies for shares himself and they are allotted to some one else, there is no concluded agreement, and he is not a contributory. Thus, where reserved shares were offered to old shareholders and their executors, and a person who was a relative of a deceased shareholder and acted for his executors applied for some reserved shares, and they were allotted to the executors, there being no power to allot them to the applicant himself, it was held that he was not a contributory (*n*).

7. Terms of offer not assented to.

7. If shares are applied for, or offered, on terms which are never assented to by both parties to the negotiation, the person applying for them, or to whom they are offered, will not be a contributory in respect to them (*o*).

8. No acceptance by proper authority.

8. Moreover, the conditions must be accepted by those persons who are competent to bind the company by assenting to them, or the allottee will not be a contributory (*p*). The application of this principle to cases in which shares have been issued on terms which are *ultra vires* will be noticed hereafter (see sub-heads *b* and *d*, pp. 1065 and 1070).

Variations between the objects of the company as formed and as projected.

A difficult class of cases arises where an application for shares is followed by an allotment, but there has been in the interval some change in the nature or objects of the company. If this change is material the allotment is no acceptance of the application, and the allottee can, at his option, accept or repudiate the shares (*q*). If, knowing the facts, he does not repudiate them before the commencement of the winding up, the inference will be that he has in fact accepted them, and he will be a contributory. If, on the other hand, he repudiates them in time, he is not a contributory (*r*). His option to

(*n*) *Mallorie's case*, 2 Ch. 181.

(*o*) See *Jackson* v. *Turquand*, L. R. 4 H. L. 305, and the other cases collected *ante*, p. 19. See, also, *Davies' case*, 4 De G. F. & J. 78, which was a case of fraud as well as of no contract; *Empson's case*, 9 Eq. 597; compare *Gustard's case*, 8 Eq. 438.

(*p*) *Howard's case*, 1 Ch. 561, and *ante*, p. 20.

(*q*) See on this subject generally *ante*, pp. 22 *et seq.* Apart from the provisions of the Companies Act, 1900, §§ 4 and 5, as to which see *ante*, pp. 41 *et seq.*, the non-issue of the whole number of shares promised to be issued is not sufficient, see *Lyon's case*, 35 Beav. 646; *Sharpus' case*, 3 De G. & S. 49; *Mansfield's case*, ib. 58, and 2 M. & G. 57.

(*r*) *Smith's case*, 2 Ch. 604, and L. R. 4 H. L. 64, where the repudiation was before the winding up.

accept or repudiate does not, however, necessarily continue until he knows the facts; it must be exercised, if at all, as soon as, with reasonable diligence, he might have known them (*s*). From this it follows that, as regards companies formed and registered under the Companies Act, 1862, inasmuch as every person can obtain a copy of a company's memorandum of association, an applicant for shares in a projected company who neglects to inform himself in reasonable time after its formation of its nature and objects as formed, and who keeps shares which have been allotted to him until the company is wound up, will not escape from being a contributory by proving that the company as formed is materially different from that which he agreed to join.

The following are instances (under the older Winding-up Acts) of persons who were held not to be contributories by reason of a change in the nature and objects of the company.

Cox's case and Naylor's case.

Cox's case and *Naylor's case* (*t*); persons who had taken shares in a company, the liability of the members of which was limited, were held not to be contributories in a company, the liability of the members of which was unlimited. The constitution of the company had been fraudulently altered, and they had not acquiesced in the alteration.

Goldsmid's case.

Goldsmid's case (*u*). *Goldsmid* took, and paid for shares in a projected steam-packet company. The directors afterwards determined to abandon the scheme, and to join a company already existing; and at a general meeting of the shareholders of the projected company, it was resolved unanimously that the new scheme should be substituted for the old one, and that the capital originally contemplated should be doubled. At this meeting *Goldsmid* was present. He did not approve of the proposed departure from the original scheme, but he did not actively oppose it: he, in fact, remained passive, and never did anything more; and two years after the meeting referred to, his shares were cancelled. He was held not to be a contributory.

Meyer's case.

Meyer's case (*x*) was the case of another allottee of shares in the same projected company. He originally had ten shares: he did not accede to the change in the scheme; but ultimately he took one share in the new company, and nine out of the ten shares which he originally agreed to take were cancelled. He was held not a contributory in respect of these nine shares.

(*s*) See *Peel's case*, 2 Ch. 674; *Lawrence's case*, 2 Ch. 412; *Wilkinson's case*, 2 Ch. 536.

(*t*) 4 K. & J. 308 and 314, cited in *Richmond's case*. Compare *Sheffield's case*, Johns. 451.

(*u*) 16 Beav. 262.

(*x*) 16 Beav. 383.

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Other cases.

Rye's case (*y*), *Blackburn's case*, as decided by V.-C. Kindersley (*z*), *Ship's case* (*a*), *Stewart's case* (*b*), *Webster's case* (*c*), *Nichol's case* (*d*), and *Baily's case* (*e*), all of which have been already referred to, further illustrate the same principle, although in applying them to winding-up cases it is necessary to bear in mind that all of them related to companies which were not in course of liquidation.

Delay in repudiation.

Upon the subject of delay in repudiation, it is important to distinguish those cases in which there has been repudiation before any winding up has commenced, from those in which there has been no repudiation until after that time. Where a person having a right to repudiate shares has duly repudiated them before the commencement of the winding up, he will not be a contributory (*f*); but where he has not he will (*g*), unless, indeed, a reasonable time has not elapsed within which he might have ascertained the facts and repudiated the shares. That he may do so in this case follows from the hypothesis, viz., that there is no agreement between him and the company (*h*).

The decisions bearing on the right of repudiation before the winding up commenced have been noticed already (*i*).

Peel's case.

A leading authority on the effect of repudiation after the winding up has commenced, is *Peel's case* (*k*), which may be usefully contrasted with them. There a person applied for shares on the day the company was registered; the application

(*y*) 3 Jur. N. S. 460, *ante*, p. 23.

(*z*) 3 Drew. 409, reversed on additional evidence, 8 De G. M. & G. 177. See *ante*, p. 29.

(*a*) 2 De G. J. & Sm. 544, affirmed L. R. 3 H. L. 343, under the name of *Downes* v. *Ship*. See *ante*, pp. 23, 24. N.B.—In this case, Ship applied for shares in one company, and was allotted shares in another company, there having been two memoranda of association.

(*b*) 1 Ch. 574, *ante*, p. 30.

(*c*) 2 Eq. 741, *ante*, p. 30.

(*d*) W. N. 1867, p. 77, and *ante*, p. 30.

(*e*) 3 Ch. 592, and *ante*, p. 31.

(*f*) See *Smith's case*, 2 Ch. 604, and L. R. 4 H. L. 64. Compare *Hare's case*, 4 Ch. 503.

(*g*) See below.

(*h*) See *Baillie's case* [1898], 1 Ch. 110.

(*i*) *Ante*, pp. 29 *et seq.* See, also, *Wynne's case*, 8 Ch. 1002; *Beck's case*, 9 Ch. 392, where there was very little delay.

(*k*) 2 Ch. 674. See, also, *Perrett's case*, 15 Eq. 250; *Wilkinson's case*, 2 Ch. 536; *Peel's case*, 2 Ch. 674; *Hare's case*, 4 Ch. 503, where the contributory remained on the register. See *Persse's case*, Ir. Rep. 6 Eq. 298, where there had been gross fraud, and an action for calls before the liquidation had failed, but the shareholder was retained on the list. *Quære* this case.

was made on the faith of a prospectus previously issued, and from which the memorandum of association materially departed; shares were allotted; the allottee paid the allotment money and a call pursuant to the prospectus; he was registered as a shareholder, and received a dividend; after the company had been ordered to be wound up he repudiated his shares, deposing that he had never seen the memorandum of association, and did not know of its departure from the prospectus. It was held, however, that as he had had ample time to ascertain the real facts, he was too late, and was a contributory.

Alteration of the memorandum and articles of association.

By reason of the stringency of § 18 of the Companies Act, 1862, a subscriber of the memorandum of association is a contributory, although the memorandum as registered may have been somewhat altered since he signed it (*l*). An alteration in the articles of association, not affecting the objects of the company, will not enable the allottee to escape from being a contributory, although such alteration be made after an application for shares, and before allotment (*m*).

b) Repudiation of illegally issued shares.

Repudiation of illegally issued shares.

With respect to the right to repudiate shares issued improperly, a distinction must be made between shares which the company has no power to issue, and shares which the company has power to issue, although not in the manner in which, or upon the terms upon which, they have been issued. The holders of shares which the company have no power to issue, in truth, hold nothing at all, and are not contributories. The only possible ground for holding them to be contributories would be by applying to them the doctrines by which a person who holds himself out as a partner incurs liabilities as if he were a partner (*n*). These doctrines might suffice to render an ostensible member of an unincorporated insolvent company liable as a contributory in it; but they have little, if any, bearing on the statutory liability of persons to be made

(*l*) See *infra*, under head 7, p. 1093.

(*m*) See *Lyon's case*, 35 Beav. 646.

(*n*) See Partn. 65 *et seq.*, and *ante*, pp. 61 *et seq.*

contributories in incorporated companies in respect of shares which do not exist in point of law (*o*).

Illegal sub-division of shares.

Thus where shares had been illegally subdivided, the holders of them were held not to be contributories in respect of the reduced parts (*p*): although where such parts could be identified with the original shares which they represented, the holders of those parts were held to be contributories in respect of the original shares which the parts made up (*q*).

Stace and Worth's case. Amalgamation of companies.

A much more difficult case is *Stace and Worth's case* (*r*). There company A. amalgamated with company B., under circumstances which rendered the amalgamation wholly void. Pursuant, however, to the scheme for amalgamation, a member in company A. exchanged his shares in it for fully paid-up shares in company B., which, however, that company had no power to issue: he was put on the register of company B. in respect of the shares taken by him, and he became a director of company B., and acted as such. The shares, if they had been legally issued, could not have been treated as fully paid up by reason of 30 & 31 Vict. c. 131, § 25, which was then in force. It was, nevertheless, held that he was not a contributory in company B., the issue of the shares to him being void, and all his acts being referable to these shares, and to the arrangement between the two companies and nothing else (*s*).

But the mere circumstance that a person has become a shareholder pursuant to a scheme which is *ultra vires* will not relieve him from liability as a contributory if the shares which he has taken can be considered as legally existing.

(*o*) See, as to the non-application in such a case of the doctrine of estoppel by conduct, *Bank of Hindustan, &c.* v. *Alison*, L. R. 6 C. P. 54, and 222, *ante*, p. 70; *Royal Bank of India's case*, 4 Ch. 252; *Stace and Worth's case*, 4 Ch. 682 (*infra*); *Smith's case*, 4 Ch. 611.

(*p*) See *Holmes's*, *Pritchard's*, and *Adam's cases*, 2 Ch. 714.

(*q*) *Feiling and Rimington's case*, 2 Ch. 714; *Sewell's case*, 3 Ch. 131.

(*r*) 4 Ch. 682. See, also, *Dougan's case*, 8 Ch. 540; *Alison's case*, 9 Ch. 1; *Alabaster's case*, 7 Eq. 273, which were decided on the same principle. *Wynne's case*, 8 Ch. 1002, and *Beck's case*, 9 Ch. 392, were somewhat similar cases, but were decided on the ground that there was no binding agreement to take shares, and nothing to prevent their repudiation.

(*s*) See the importance of this, 8 Ch. 546.

Challis's case. Hare's case.

Thus in *Challis's case* (*t*) and *Hare's case* (*u*), which were in many respects similar to *Stace and Worth's case*, the member who had exchanged his shares was held to be a contributory in the purchasing company; he having in effect entered into a distinct agreement with that company to take shares in it, and that agreement being valid, although resulting from an invalid agreement for an amalgamation (*x*). In *Hare's case* there was a distinct and separate application for shares which was duly accepted; and in *Challis's case*, certificates of shares in the purchasing company had been sent to and accepted by the contributory, and he had attended meetings of the shareholders. The Court of Appeal held the agreement with him was not void but was capable of ratification.

The holder of shares existing in point of law, but held upon terms not binding on the company, may be a contributory in respect of them, as will be seen presently (*y*).

c) Repudiation on the ground of fraud.

Repudiation on the ground of fraud.

It has been already seen that fraud cannot be relied upon as a defence to a proceeding by a creditor, whether by action or by *scire facias* (*z*); and it follows that such fraud does not enable a shareholder in an insolvent company registered under the Companies Act, 1862, to escape from being put on the list of contributories, there being no other method by which the creditors can have recourse to him. This is now completely settled by the cases which arose in winding up *Overend, Gurney and Company*. It was there held, that where the prospectus of a company formed and registered under the

Oakes' case and Peek's case.

(*t*) 6 Ch. 266. And see *Miller's Dale Lime Co.*, 31 Ch. D. 211, where there was an irregularity in the issue of the shares.

(*u*) 4 Ch. 503. In this case Hare had repudiated his shares, but not in time. See, also, *Campbell's case*, and *Hippisley's case*, 9 Ch. 1, which were very similar to the two last, and in which the holders of shares declared by a court of law in another case to have been illegally created were held contributories.

(*x*) This distinguishes these cases from those cited *ante*, note (*o*). See 8 Ch. 546.

(*y*) *Infra*, head *d*), p. 1070, and the table on p. 1092. *Ex parte Daniell*, 1 De G. & J. 372, and *Robinson's Executors' case*, 2 De G. M. & G. 517, illustrate the position of directors who improperly appropriate shares which the company can repudiate.

(*z*) *Ante*, p. 398.

Companies Act, 1862, had been issued, and such prospectus was expressed in terms calculated to deceive those who read it with respect to the true position of the company, the issuing of the prospectus was in point of law a fraud on the part of the company, and that such fraud entitled persons taking shares directly from the company on the faith of such prospectus to repudiate their shares; but that they were, nevertheless, liable to be placed on the list of contributories of the company, it being proved that the creditors of the company would otherwise remain unpaid (*a*).

This important decision has been followed in other cases, to which it is unnecessary to refer in detail (*b*). Moreover it has been extended to cases of solvent companies on the ground that a winding-up order entirely alters the position of the shareholders (*c*).

Repudiation before winding up.

Where, however, a person entitled to repudiate his shares on the ground of fraud has repudiated them before the commencement of the winding up, and has procured himself to be removed from the register of members, he will not be a contributory (*d*), even as a past member (*e*). And even if he has not procured himself to be so removed, still if he has instituted legal proceedings to have his name removed (*f*), or has asserted his right to repudiate his shares in an action by the company to enforce calls upon them (*g*), this will be

(*a*) *Ex parte Oakes and Peek*, 3 Eq. 576, affirmed L. R. 2 H. L. 325, under the name of *Oakes* v. *Turquand*. Oakes took his shares directly from the company. Peek bought his from a previous shareholder. Both were put on the list.

(*b*) See *Ashley's case; Kent* v. *Freehold Land, &c., Co.*, both cited below; *Stone* v. *City and County Bank*, 3 C. P. D. 282; *Tennent* v. *City of Glasgow Bank*, 4 App. Ca. 615.

(*c*) *Burgess's case*, 15 Ch. D. 507, see *ante*, p. 1045.

(*d*) This follows from the cases cited in the next two notes.

(*e*) *Wright's case*, 7 Ch. 55, reversing 12 Eq. 331, but *qu.* whether the V.-C. Wickens was not right.

(*f*) *Reese River Co.* v. *Smith*, L. R. 4 H. L. 64, affirming *Smith's case*, 2 Ch. 604, where the proceedings were stayed by the winding up; *Scottish Petroleum Co.*, 23 Ch. D. 413. After a winding up has commenced, a plaintiff cannot amend his claim, so as to raise new grounds for rescission, *Cocksedge* v. *Metropolitan Coal Consumers Assoc.*, W. N. 1891, pp. 132 and 148.

(*g*) *Whiteley's case* [1900], 1 Ch. 365, reversing ib. [1899], 1 Ch. 770, the counterclaim was put in after commencement of winding

Test cases.

sufficient. If several shareholders are in the same position, and one of them has instituted legal proceedings before the commencement of the winding up to have his name removed, and ultimately obtains a decision in his favour, the others, if they have, before the commencement of the winding up, repudiated their shares, and agreed with the company to treat the pending proceedings as a test case and decisive of their right to repudiate, will be allowed to avail themselves of the decision, though it be not given until after the winding up has commenced, and they have not taken any legal proceedings (*h*). But whether legal proceedings are pending between other shareholders and the company (*i*) or not (*k*), notice of repudiation, though given before the commencement of the winding up, is not of itself sufficient to entitle a person to have his name removed (*l*).

Opposition to petition after repudiation.

If a shareholder before the winding up has commenced has definitely elected to repudiate his shares, and has instituted proceedings for the removal of his name from the register, his subsequent opposition in the character of a contributory to the petition to wind up the company is not of itself such a departure from his election to repudiate his shares as will deprive him of his right to do so (*m*).

Other voidable contracts.

The principles on which *Oakes* v. *Turquand* and *Burgess's case* proceed are by no means confined to contracts which are voidable on the ground of fraud. They extend to all voidable contracts entered into by persons who are *sui juris:* but they do not extend to infants nor to contracts which are void as distinguished from voidable (*n*). Their application to conditional

up. But in *Persse's case*, Ir. Rep. 6 Eq. 298, the name was retained on the list, although an action brought before the winding up for calls had failed. *Sed quære.*

(*h*) *Pawle's case*, 4 Ch. 497; *McNiell's case*, 10 Eq. 503.

(*i*) *Ashley's case*, 9 Eq. 263, in this case there was no repudiation before the winding up. *Scholey* v. *Central Rail. Co. of Venezuela*, ib. 266, note.

(*k*) *Kent* v. *Freehold Land and Brickmaking Co.*, 3 Ch. 493, reversing S. C. 4 Eq. 588; *Hare's case*, 4 Ch. 503.

(*l*) *Scottish Petroleum Co.*, 23 Ch. D. 413. In *Fox's case*, 5 Eq. 118, a repudiation which had been accepted by the company before the commencement of the winding up was held sufficient. *Sed qu.*, see 23 Ch. D. p. 437.

(*m*) *Tomlin's case* [1898], 1 Ch. 104.

(*n*) See the last head *b*), p. 1065.

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contracts and to shares which have been accepted will be noticed hereafter (*o*).

Companies not formed under the Act of 1862.

Further, the same principles apply to all companies wound up under the Companies Act, 1862, whether formed or registered under it or not: for the winding-up machinery of that Act cannot be applied consistently with any other principles (*p*).

The older authorities on this subject will be found collected on pp. 101 *et seq.*, but they cannot be relied upon with reference to the question of contributory or non-contributory.

d) Repudiation on the ground of non-performance of conditions.

Repudiation on the ground of non-performance of conditions.

The position of a person who has agreed to take shares upon special conditions is generally one of considerable difficulty. If the conditions have not been assented to by both parties to the agreement (*q*), or if the conditions, having been assented to in point of fact, are *ultra vires*, so that the company could not assent to them in point of law (*r*), there is in truth no concluded contract. This class of cases has been already examined. For the present, it will be assumed that there is a concluded agreement, but an agreement upon special conditions. Under such circumstances, the points to determine are—1, whether the condition is a condition precedent to the person's becoming a shareholder, or a condition subsequent; and 2, whether, assuming the condition to be precedent, it has been performed or waived.

Conditions precedent.

If the condition is precedent, and has not been performed, and its performance has not been waived, the applicant will not be a contributory (*s*).

Rogers' case.

Thus in *Rogers' case* (*t*), a person applied in the usual form for shares, and his application was sent to the directors with a letter stating that the application was made on condition that

(*o*) See next head *d*), and p. 1074.

(*p*) See the judgment in *Burgess's case*, 15 Ch. D. 507.

(*q*) *Ante*, p. 20.

(*r*) See *Pellatt's case*, 2 Ch. 527.

(*s*) See, in addition to the case referred to in the text, *Mainwaring's case*, 2 De G. M. & G. 66; *Robert's case*, 3 De G. & S. 205, and 2 Mac. & G. 192; *Austin's case*, 2 Eq. 435.

(*t*) *Rogers' case*, 3 Ch. 633. See, also, *Simpson's case*, 4 Ch. 184; *Wood's case*, 15 Eq. 236. Compare *Thomson's case*, 4 De G. J. & Sm. 749.

the applicant should be appointed agent to the company; he never obtained the agency, and had done nothing which amounted to an acceptance of the shares without it; he was held not a contributory, although the shares had been allotted to him.

Wood's case.

The following case was one of greater difficulty, but decided on the same principle. In *Wood's case* (*u*), Wood agreed to take shares upon condition that he should obtain a contract for the supply of certain goods. The shares were allotted, and Wood was informed thereof, and he was registered as a shareholder. Nothing more was done, and Wood never obtained the contract. The Court held that Wood was not a contributory, first, because the conditions on which alone he agreed to take shares had not been assented to by the company with sufficient distinctness, and secondly, because, even if they had, they were conditions precedent, which had not been performed or waived.

Ormerod's case.

Again, in *Ormerod's case* (*x*), Ormerod by an underwriting letter agreed with a vendor of the company, in consideration of a commission, to subscribe or find responsible subscribers for a certain number of shares at any time within three months, if and when called upon by the vendor, and in the event of his not doing so, he authorised the vendor to apply for the shares in his name, and the directors to allot them to him. No request to subscribe or find subscribers for the shares was made to Ormerod, but the shares were allotted to him. The Court held that a request was a condition precedent to the underwriter's liability to be treated as a shareholder, and that no such request having been made, ordered his name to be removed from the list of contributories.

Conditions subsequent, &c.

Where, however, the condition is not precedent to a person's becoming a shareholder; or where if precedent he has waived its performance, either wholly or for a time subsequent to that at which he is to become a shareholder; or if the so-called condition is not in truth a condition at all, but only an agreement giving rise, in the event of its breach, to a right of action;

(*u*) 3 De G. & J. 85. See, too, *Shackleford's case*, 1 Ch. 567, *ante*, p. 20, and *Pellatt's case*, 2 Ch. 527, *infra*, p. 1074.

(*x*) [1894], 2 Ch. 474. See, too, *Ex parte Stark* [1897], 1 Ch. 575; and compare *Hindley's case* [1896], 2 Ch. 121.

in all such cases as these, the person who has agreed to become a shareholder will be a contributory, whatever his rights may be by reason of the breach by the company of the condition or agreement.

The following are leading authorities on this head (*y*):

Fisher's case.

In *Fisher's case* (*z*), an application for 700 shares was made on a specified condition. 700 shares were allotted to the applicant and were registered in his name with the word conditional against it. He did not know of this, but he afterwards sold and transferred 400 of the shares. He was held a contributory for the remaining 300 shares on the ground that the condition if precedent had been waived; and that if the condition was a condition subsequent to his becoming a shareholder, its non-performance did not entitle him to reject the shares after the winding up of the company had commenced.

Ex parte Burton.

In *Ex parte Burton* (*a*), a person was persuaded to apply to an insurance society for an appointment as agent, and also for shares to qualify him for the appointment. His application was apparently acceded to, but before he paid for his shares, or executed the company's deed, he relinquished the appointment, and expressed a desire to relinquish the shares. This, however, he was not permitted to do, and he was held a contributory.

Payment in shares. Elkington's case.

So where a person agreed to supply the company with goods to the value of 3,000*l.*, and to take shares in the company to half that amount in part payment, and to take cash for the residue, and he applied for the shares in the ordinary form, and paid the deposit on them, and they were allotted to him, and he received the certificates and paid the sum required upon the allotment; it was held that he was a contributory in respect of the shares, although no goods were ever ordered or supplied; and although it was contended that the agreement to take shares was conditional upon goods being required (*b*). *A fortiori* is a person a contributory who

(*y*) See, also, *infra*, p. 1073, as to conditions which are *ultra vires*.

(*z*) *Fisher's case*, and *Sherrington's case*, 31 Ch. D. 120.

(*a*) 16 Jur. 967; and see *Harrison's case*, 3 Ch. 633; *Thomson's case*, 4 De G. J. & Sm. 749.

(*b*) *Elkington's case*, 2 Ch. 511. Compare *Pellatt's case*, ib. 527, *infra*, p. 1074.

actually sells goods to a company and receives shares in part payment, and is registered in respect of them (*c*). The circumstance that the goods have not been wholly paid for is immaterial (*d*).

Conditions which are *ultra vires*.

Similar principles apply to agreements to take shares in a company upon terms or conditions which are not binding on the company. If the person who has agreed to take shares on such terms has not, in fact, accepted them and become a shareholder in respect of them he will not be a contributory. If on the other hand he has accepted the shares and become a shareholder in respect of them he cannot repudiate them after the winding up, and will be a contributory in respect of them. Both of these propositions require illustration.

The following cases arising under the older Winding-up Acts and in which persons were held not to be contributories, may be usefully referred to on the first point:—

Not contributories.

Woodfall's case, 3 De G. & Sm. 631 (*e*).

A creditor of the company paid in scrip, which he sold. It was agreed that he should not execute the company's deed, and he did not; but his name was returned as a shareholder.

Bunn's case, 2 De G. F. & J. 275 (*f*).

The company agreed that Bunn should have paid-up shares transferable by delivery, but that he should incur no liability and not be required to execute the company's deed. He never did, but he attended meetings.

Coleman's case, 1 De G. J. & Sm. 495.

Coleman had executed the company's deed, but other conditions of membership had not been complied with, and his agreement to take shares contained terms not binding on the company.

Lord Westbury also held that even if Mr. Coleman had become a shareholder, the proper inference from the facts would have been that his shares had been forfeited pursuant to the promise of the managing director. The directors had power to forfeit.

(*c*) *Gore and Durant's case*, 2 Eq. 349.

(*d*) Ib.

(*e*) See, too, *Mowatt and Elliott's case*, 3 De G. M. & G. 254. Compare *Davidson's case*, 3 De G. & S. 21.

(*f*) See, too, *Saunders's case*, 2 De G. J. & Sm. 101. Bunn was held not to have accepted the shares. This circumstance distinguishes his case from *Daniell's* and others of that class noticed below.

Not contributories.

Pellatt's case, 2 Ch. 527 (*g*).

Pellatt agreed to take shares on condition that goods to a certain amount should be taken of him, and that he should pay a small sum per share in cash, and that the goods should be taken in payment of the rest. He paid a deposit on his application for shares, and they were allotted to him, and he was put on the register; but he did not know of the allotment or registration. Before anything further was done, and before any goods were ordered, he withdrew from his engagement; three years afterwards the company was wound up.

Howard's case, 1 Ch. 561.

Reserved shares were accepted by Howard on conditions which were assented to by persons who had no authority to assent to them.

Upon precisely similar principles, if a person agrees to take fully paid-up shares he is not a contributory in respect of shares not paid up, if he has not accepted such shares, and become a shareholder in respect of them (*h*).

Cases where the shares have been accepted.

These cases, however, must not be confounded with others which do not rest merely on agreement. If persons have become shareholders upon terms which are not binding on the company, such persons will be contributories in respect of the shares they have in fact accepted; and although they need not have taken them they cannot repudiate them after the winding up has commenced. The following are the leading cases on this point. The reader will observe the difference between this class of cases and those discussed above (p. 1065, head 4 *b*), where the shares were themselves illegally issued, and could not be legally recognised.

Contributories.

Addison's case, 5 Ch. 294.

Addison paid for and accepted shares upon the terms that they should be cancelled and all money paid for them returned on his giving a certain notice. He gave the notice, received his money back, and transferred his shares to a nominee of the company. He was nevertheless held to be a contributory: the directors having had no power to bind the company by the terms mentioned nor to cancel the shares.

Bridger's case, 5 Ch. 304, and 9 Eq. 74 (*i*).

An agent of the company agreed to take shares upon the terms that he should pay for them out of his commission on shares

(*g*) Compare *Elkington's case*, 2 Ch. 511, *ante*, p. 1072.

(*h*) *Arnot's case*, 36 Ch. D. 702; *Carling's case*, 1 Ch. D. 115, and *infra*, head 5, p. 1075, &c.

(*i*) See, also, *Davidson's case*, 3

which he might dispose of. He applied for and received an allotment of shares and certificates, and he was registered as a shareholder and acted as such, and was held to be a contributory notwithstanding the collateral agreement as to the mode of paying for them.

Ex parte Daniell, 1 De G. & J. 372, and 23 Beav. 568 (*k*).

The directors of a company allotted fully paid-up shares to themselves. Daniell was a shareholder and a director, and he took some shares under this resolution, and he obtained a certificate that they were fully paid. He was held a contributory and liable to calls as if the shares were not paid up. The importance of this case is due to the fact that the Court held that although Daniell could not repudiate his shares the company was not bound by the terms on which alone he had accepted them. The shares allotted by the directors to themselves were treated as assets of the company misapplied by the directors (*l*). Lord Justice Knight Bruce dissented. See on this case *Carling's case*, 1 Ch. D. 1.

Nickoll's case, 24 Beav. 639,

is another case in which a promoter was fixed with shares which had been issued to him as fully paid up in payment of services. He had accepted the shares, and the company was not bound by the agreement that they should be treated as fully paid up.

There are numerous other cases illustrating the same principle, but they mostly relate to paid-up shares or shares issued at a discount, and will be found under the next head (see pp. 1078–83).

5. *Holders of paid-up shares.*

Holders of fully paid-up shares.

With respect to holders of fully paid-up shares in a limited company, as they are not as a rule liable to calls (*m*), they cannot be placed on the list of contributories against their own consent; they are entitled to be on in order to share the surplus assets, if any; but if they disclaim all interest in this respect, they ought not to be put on the list (*n*).

De G. & Sm. 21; *Chapman and Barker's case*, 3 Eq. 361.

(*k*) See, also, *Daniell's case*, 22 Beav. 43, where he was held to be a contributory, although he had endeavoured to get rid of his shares. The later report relates to calls.

(*l*) See, also, *Robinson's Executors' case*, 2 De G. M. & G. 517.

(*m*) There are exceptions. See, as to banking companies issuing notes, § 6 of the Companies Act, 1879. Perhaps, also, in the case of companies limited by shares, the articles of which specially bind the holders of paid-up shares to pay certain specified debts, *McKewan's case*, 6 Ch. D. 447; *Maxwell's case*, 20 Eq. 585; but see *Baird's case* [1899], 2 Ch. 593, and *ante*, p. 1044, note (*n*).

(*n*) *Marlbro' Club Co.*, 5 Eq. 365; *Baglan Hall Colliery Co.*, 5 Ch. 346;

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Companies Act, 1867, § 25.

Payment up of shares in cash.

In order to prevent the frauds which were committed by treating shares as paid up in full when they had only been paid for in land, goods, or services of very questionable value, it was enacted by 30 & 31 Vict. c. 131, § 25, that shares in companies registered under the Companies Act, 1862, are to be taken to be issued and held subject to the payment of the whole amount thereof in cash, unless there is a contract in writing to the contrary filed with the registrar of joint-stock companies at or before the issue of such shares.

Repeal of section.

This enactment gave rise to much litigation, especially with reference to the questions, What was a sufficient contract in writing to satisfy the requirements of the section, and what was a payment in cash within its meaning? The decisions on these points, and upon the other difficulties which have arisen upon the construction of the section, and the power of the Court to grant relief when the requirements of the section have not been complied with, have been already considered (*o*). The section has now been repealed (*p*), but as there is some doubt as to the effect of the repeal upon transactions to which the section applied before its repeal (*q*), the earlier decisions may still be of importance; they will be found collected in the note on pages 569 to 573.

Payment otherwise than in cash.

Previously to the above enactment it had been decided, and where the section in question does not apply, it may be taken as settled, that shares may be fully paid up, not only in money, but in money's worth; and shares which are *bonâ fide* given as paid up, in payment of property transferred to the company, or of services rendered to it, or of other claims against it, must, on the winding up of a company be treated as paid-up shares (*r*); and in the absence of fraud or of any obvious money measure showing the shares to have been issued for less than their nominal value (*s*), the Court will not

Anglesea Coll. Co., 1 Ch. 555, and 2 Eq. 379; *Leifchild's case*, 1 Eq. 231; *Hollyford Mining Co.*, Ir. Rep. 1 Eq. 39.

(*o*) *Ante*, pp. 569 *et seq.*

(*p*) Companies Act, 1900, § 33.

(*q*) *Brutton and Burney, Ld.* [1901], 1 Ch. 637, and *ante*, p. 566.

(*r*) See *ante*, p. 395; *Currie's case*, 3 De G. J. & Sm. 367; *Dent's case*, 8 Ch. 768; *Anglesea Colliery Co.*, 2 Eq. 379, and 1 Ch. 555; and the cases in the next notes.

(*s*) *Chapman's case* [1895], 1 Ch. 771.

inquire into the value of that which is taken by the company in payment instead of money (*t*); for example, where payment was made in Confederate cotton bonds, which turned out to be worthless, it was nevertheless treated as duly made (*u*). But a fictitious payment, by taking money from the company and returning it, is no payment at all: *e.g.*, where a promoter in this way paid up the shares of a director (*x*); or where a director prepays his shares and takes back the money in payment of fees (*y*). Such payments can only be valid where the honesty of the transaction and the solvency of the company are unquestionable. Where a director pays up his shares out of money paid to him, but which can be recovered from him by the company, the shares may be treated as not paid up (*z*).

Moreover, if a shareholder pays money to the company upon the terms that the money shall be treated as a loan, or as payment in respect of shares, according as the company continues business or is wound up, the money so paid cannot, on the winding up of the company, be treated as having been paid on account of the shares, and in anticipation of calls on them (*a*).

Payments in respect of shares.

In order that money may be treated as paid in respect of shares, it must be paid to the company on account of the shares in question (*b*). When one company amalgamates with another, and the shareholders in the old company exchange their shares for shares in the new company, payments to the new company in respect of the new shares cannot be treated

(*t*) *Wragg, Limited* [1897], 1 Ch. 796, where the earlier cases, viz., *Pell's case*, 5 Ch. 11, and 8 Eq. 222; *Forbes and Judd's case*, 5 Ch. 270; *Baglan Hall Colliery Co.*, 5 Ch. 346; *Jones's case*, 6 Ch. 48; *Maynard's case*, 9 Ch. 60; *Anderson's case*, 7 Ch. D. 75; *Leeke's case*, 6 Ch. 479, and 11 Eq. 100 (containing some *dicta* in 11 Eq. p. 107 to the contrary), and *Chapman's case* [1895], 1 Ch. 771, are collected and examined.

(*u*) *Schroder's case*, 11 Eq. 131.

(*x*) *Englefield Colliery Co.*, 8 Ch. D. 388; *Leeke's case*, 11 Eq. 100, and 6 Ch. 469; *Disderi & Co.*, 11 Eq. 242, where a cheque of the company was given, and given back.

(*y*) *Syke's case*, 13 Eq. 255. See, too, *Washington Diamond Mining Co.* [1893], 3 Ch. 95; *Kent's case*, 39 Ch. D. 259, where transactions of this kind were held invalid, as amounting to a fraudulent preference.

(*z*) *Hay's case*, 10 Ch. 593; but see *infra*, pp. 1083 and 1092.

(*a*) *Barge's case*, 5 Eq. 420. The case turned on the fact, that the agreement was made after a petition to wind up had been presented; but the judgment goes far to support the statement in the text.

(*b*) See case in next note, and

as payments to the old company, in respect of the old shares (*c*). A payment by a director in advance of the amount of shares held by him will discharge him, although the payment may have been made to enable the company to pay off a debt for which the director was liable as guarantor (*d*).

Return of capital.

If a holder of paid-up shares has, to his knowledge, had part of the capital of the company returned to him, *e.g.*, by receiving a bonus or dividend which he knows to be paid out of capital, and not out of profits, he could perhaps be treated as the holder of shares not paid up, and be put on the list accordingly (*e*).

Shares issued at a discount.

Shares in limited companies governed by the Companies Act, 1862, may not be issued at a discount; the Companies Act, 1900, has not altered the law in this respect (*ee*). Moreover, a contract registered in accordance with the requirements of § 25 of the Companies Act, 1867, cannot, even when all the creditors are paid, and the equities of the members alone remain to be adjusted (*f*), bind the company to treat a share issued at a discount (*g*), or for no consideration (*h*), or for an illusory consideration (*i*), as a fully paid-up share. The statute assumes that every share is to be paid for in money or money's worth,

Carriage Co-operative Supply Assoc., 27 Ch. D. 322. And see *Duchess of Westminster Silver Lead Ore Co.*, 10 Ch. D. 307, where a payment generally in respect of a number of shares was apportioned equally between them.

(*c*) See *Ex parte Jeaffreson*, 11 Eq. 109.

(*d*) *Poole, Jackson, and Whyte's case*, 9 Ch. D. 322.

(*e*) See *Moxham* v. *Grant* [1900], 1 Q. B. 88; *Stringer's case*, 4 Ch. 475, and *Rance's case*, 6 ib. 104; and compare *Re Cardiff Coal and Coke Co.*, 11 W. R. 1007, and *Cardiff, &c., Co.* v. *Norton*, 2 Eq. 558, and 2 Ch. 405. See, also, *McKay's case*, 2 Ch. D. 1. Under the Comp. Act, 1880, accumulated profits may be returned in reduction of paid-up shares on the terms that they may be called up again, see § 3, and *ante*, pp. 562, 563. See, too, *Fore Street Warehouse Co.*, W. N. 1888, p. 155, and *ante*, p. 559, note (*a*).

(*ee*) *Keatinge* v. *Paringa Consolidated Mines, Ld.*, W. N. 1902, p. 15, where a company sought to justify such an issue under Comp. Act, 1900, § 8, as to which see *ante*, p. 44.

(*f*) *Welton* v. *Saffery* [1897], A. C. 299; *Weymouth and Channel Islands, &c., Co.* [1891], 1 Ch. 66.

(*g*) *Ooregum Gold Mining Co.* v. *Roper* [1892], A. C. 125; *London Celluloid Co.*, 39 Ch. D. 190; *Ex parte Sandys*, 42 Ch. D. 98; *Almada Tirito Co.*, 38 Ch. D. 415; *Addlestone Linoleum Co.*, 37 Ch. D. 191. *Plaskynaston Tube Co.*, 23 Ch. D. 542, and *Ince Hall Rolling Mills Co.*, 23 Ch. D. 545, are overruled.

(*h*) *Eddystone Marine Ins. Co.* [1893], 3 Ch. 9; *Dent's case*, 15 Eq. 407 and 8 Ch. 768.

(*i*) *Chapman's case* [1895], 1 Ch. 771.

and to the extent to which there is neither, a registered contract affords no protection. Where a share has been issued at a discount, to the extent of the discount, nothing has been paid for it; consequently the holders of such shares will be contributories (*k*), unless the company is estopped from proving that the shares are not fully paid up.

Estoppel.

A company may be estopped from proving that shares issued by it as paid up are in truth not paid up. This doctrine applies in favour of a *bonâ fide* purchaser for value without notice of the real facts, and protects him from being put upon the list of contributories (*l*). It will also apply to an original allottee, if he was ignorant of the real facts, and has suffered loss by acting (*m*), or remaining inactive (*n*), on the faith that the shares were, in fact, paid up. But the doctrine will not avail persons who know the truth (*o*), unless, perhaps, they derive title through a purchaser for value without notice (*p*).

Repudiation of unpaid-up shares.

Few questions present more difficulty than those which arise when a person, who has agreed to take paid-up shares, is sought to be put on the list in respect of shares which are not paid up. He naturally desires to repudiate them, but it is seldom he can do so, unless the matter rests merely in agreement.

Effect of Companies Act, 1867, § 25.

The leading cases on this subject will be found collected below. In all cases, the question whether a person is to be treated as a member in respect of paid-up or unpaid-up shares, resolves itself into two others, viz., (1) is he or ought he to be treated (*q*) as a member in respect of any shares?

(*k*) See *infra*, p. 1082.

(*l*) *Burkinshaw* v. *Nicolls*, 3 App. Ca. 1004; *A. W. Hall & Co.*, 37 Ch. D. 712; *British Farmers' Pure Linseed Cake Co.*, 7 Ch. D. 533; *Waterhouse* v. *Jamieson*, L. R. 2 H. L. 29, and see *Guest* v. *Worcester Rail. Co.*, L. R. 4 C. P. 9. *Blyth's case*, 4 Ch. D. 140, *contra*, cannot be relied upon.

(*m*) *Bloomenthal* v. *Ford* [1897], A. C. 156, reversing *Ex parte Bloomenthal* [1896], 2 Ch. 525; *Parbury's case* [1896], 1 Ch. 100.

(*n*) See *Dixon* v. *Kennaway & Co.* [1900], 1 Ch. 833, and *ante*, p. 82.

(*o*) *Ex parte Sandys*, 42 Ch. D. 98; *London Celluloid Co.*, 39 Ch. D. 190, and *per* Wright, J., in *Markham and Darter's case* [1899], 1 Ch. 414.

(*p*) Compare *Barrow's case*, 14 Ch. D. 432, which was followed in *Ex parte Sandys*, 42 Ch. D. 98, as to the 150 shares repurchased, with *London Celluloid Co.*, 39 Ch. D. 190. See, too, *Simm* v. *Anglo-American Tel. Co.*, 5 Q. B. D. 188, and *Whitworth's claim* [1901], 1 Ch. 115.

(*q*) *i.e.*, having regard to the power to put his name on the register, if not on already.

and (2), can they be treated as paid up? If a person is not a member, and cannot properly be treated as a member in respect of any shares, he will escape (r); but otherwise he will be fixed, unless the shares can be treated as paid up. In cases to which the repealed section (§ 25) of the Companies Act, 1867, does not apply, they can be so treated if they have been paid up in money or money's worth (s); in cases to which that section does apply, payment in money or money's worth is equally necessary (t), but payment in money's worth is not of itself sufficient; in such cases the shares cannot be treated as paid up, unless they have been paid for in cash (u), or have been paid for otherwise than in cash, pursuant to a duly registered contract (x). If this distinction be borne in mind, there will be no difficulty in applying the decisions in cases to which the repealed section did apply to cases in which it does not; for the principles upon which the decisions are based are the same in all cases. The principles upon which a company is estopped from proving that shares issued as paid up are not so in fact, are also equally applicable to either class of cases (y).

Not contributories.

In the following cases, persons who had agreed to take or had taken paid-up shares, were held not contributories:—

Macdonald, Sons, & Co. [1894], 1 Ch. 89.

Certain persons were promised fully paid-up shares for recommending the company's goods. Certificates of shares were sent to them, and kept for some time by the recipients. The certificates did not state that the shares were fully paid up: the shares were issued as fully paid under a contract with the vendor, but the contract was not registered. The certificates were returned before the winding up. The recipients were not on the register. The Court held they had never agreed to take any but fully paid-up shares.

Arnot's case, 36 Ch. D. 702 (z),

was a similar case. Arnot had agreed to take paid-up shares in payment of services, the agreement was not registered, but no

(r) As in *Arnot's case* below.

(s) *Ante*, p. 1076. Though shares in limited companies governed by the Companies Act, 1862, cannot be issued at a discount (*ante*, p. 1078), shares in companies governed by the Companies Clauses Acts may be, *ante*, p. 549.

(t) *Ante*, pp. 1078–9.

(u) As to which see *ante*, p. 570.

(x) As in *Carling's case*, *infra*. As to what is such a contract, see *ante*, p. 569.

(y) As to this see *ante*, pp. 82 and 1079.

(z) Compare *Ex parte Sandys*, *infra*. See, too, *Dunster's case* [1894], 3 Ch. 473, *infra*, p. 1094.

shares were allotted to him or registered in his name. He was held not bound to take unpaid-up shares.

Not contributories.

Carling's case, 1 Ch. D. 115, reversing 20 Eq. 580.

Hespeler's case, ib.

De Ruvigne's case, 5 Ch. D. 306.

In all these cases directors had paid-up shares transferred to them by a promoter: the shares were registered in their names. They were issued as paid up pursuant to a duly registered contract. It was held not right, therefore, to put them on the list for unpaid-up shares. Their liability in respect of their corrupt bargain with the promoter was another matter. As to this, see *infra*, p. 1083.

Brown's case, 9 Ch. 102,

was a similar case; but, it would seem, the contract under which the shares were issued was not registered. There was no agreement to take any shares unless they were paid up.

Currie's case, 3 De G. J. & Sm. 367 (*a*).

Directors had agreed to take paid-up shares, but no others. The state of the register does not appear.

Miller's case, 5 Ch. D. 70, and 3 ib. 661.

Miller was a director, but had retired. 25 fully paid-up shares were registered in his name as his qualification shares, but they were treated as forfeited when he retired.

Estoppel.

Bloomenthal v. *Ford* [1897], A. C. 157, reversing *Ex parte Bloomenthal* [1896], 2 Ch. 525.

Bloomenthal lent money to the company on the terms that he should have fully paid-up shares as a security. Shares were allotted to him and certificates sent stating them to be fully paid up—they were not so, in fact. He, however, did not know this, and believed them to be so. The company was estopped from treating them as unpaid.

Parbury's case [1896], 1 Ch. 101.

A similar case. Parbury applied to a promoter for an allotment of fully paid-up shares, and paid him their nominal value. Shares were allotted to Parbury by the company, and certificates sent stating them to be fully paid up. The shares were issued under a contract with the promoter, which was not registered; the promoter kept the money paid to him. Parbury was ignorant of these facts. The company was estopped by their certificate from treating the shares as unpaid.

McKay's case [1896], 2 Ch. 757,

was also a case of estoppel. McKay bought shares on the market. The transfer stated the shares to be fully paid up, and bore a certification by the secretary that the certificates had been lodged. The certificates did not state whether the shares were, or were not, fully paid. The company was estopped by the certification from treating them as unpaid (*b*).

(*a*) The shares here referred to are those indicated as (*a*) and (*b*) in the report.

(*b*) This case cannot now be relied

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Contributories.

In the following cases, persons who had agreed to take paid-up shares, were held contributories:—

Currie's case, 3 De G. J. & Sm. 367.

Directors had agreed to qualify themselves; 100 shares qualified; they endeavoured to discharge their obligation by means of fully paid-up shares partly obtained from promoters and partly voted to themselves.

Ex parte Daniel, 1 De G. & J. 372.
Nickolls' case, 24 Beav. 639.
} *Ante*, p. 1075.

Leeke's case, 6 Ch. D. 469, and 11 Eq. 100.
Disderi & Co., 11 Eq. 242.
} See *infra*, under the next head.

Barrow's case, 14 Ch. D. 432.

A director was registered as the holder of 300 paid-up shares, but they were neither paid up in cash nor protected by a registered contract.

Other shares were treated as paid up, he being regarded as a purchaser for value without notice. Followed on this point in *Ex parte Sandys*, 42 Ch. D. 98, as to 150 shares repurchased; but see as to this, *London Celluloid Co.*, 39 Ch. D. 190, and *ante*, p. 1079, note (*p*).

Cleland's case, 14 Eq. 387,
Pagin and Gill's case, 6 Ch. D. 681,
Andress's case, 8 Ch. D. 126,

were all cases in which paid-up shares had been given in payment of goods or services, and registered in the name of the creditor; but tnere was no registered contract (*c*).

Shares issued at a discount.

London Celluloid Co., 39 Ch. D. 190.
Addlestone Linoleum Co., 37 Ch. D. 191.
Ex parte Sandys, 42 Ch. D. 98.

Holders of shares at a discount. The shares had been accepted with knowledge of the fact, but not of the legal consequences. In *Ex parte Sandys*, 150 of the shares were treated as paid up, S. having repurchased them from a purchaser for value without notice; as to this, see *Barrow's case*, *supra*.

Welton v. *Saffery* [1897], A. C. 299.

A similar case, but contribution was only necessary in order to adjust the rights of the contributories *inter se*.

No consideration.

Eddystone Marine Ins. Co. [1893], 3 Ch. 9.

A similar case. Shares were allotted as fully paid up to directors and shareholders in consideration of past services, in pursuance of a contract duly registered. In fact, no consideration was given. The allottees knew the facts and accepted the shares. The Court held them to be contributories for such shares as unpaid.

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upon, for it has since been decided that a "certification" by the secretary does not estop the company, *George Whitchurch, Ld.* v. *Cavanagh*, 17 Times, L. R. 746, see *ante*, p. 83.

(*c*) See as to this class of case, *ante*, p. 1076.

When shares are issued to promoters or their nominees as fully paid up pursuant to a duly registered contract, but under circumstances which render the transaction a breach of trust as against the company, the holders of the shares will not be contributories in respect of them (*d*), although the holders may be compelled to pay the value of the shares by other proceedings, *e.g.*, by proceedings under § 10 of the Companies (Winding-up) Act, 1890 (*e*).

6. *Directors in respect of their qualification shares.*

Directors' qualifications.

The cases in which directors and other officers of a company ought to have had a certain number of shares as a qualification for their office, and they have acted more or less without qualifying themselves, have given rise to considerable difference of opinion.

No qualification necessary.

In the first place, mistakes sometimes arise from supposing that a certain number of shares are required to qualify all directors, when in truth the qualification is only necessary with respect to some of them, *e.g.*, for elected directors, as distinguished from those originally named (*f*), for town as distinguished from country directors (*g*). Cases such as these turn on the true construction of the company's deed of settlement or articles of association, and not upon any rule relating particularly to contributories.

Again, a resolution of the board of directors to the effect that all the members of the board shall hold a certain number of shares as a qualification does not necessarily impose any obligation to qualify, and a director who acts without obeying the resolution will not necessarily be a contributory (*h*).

Special Acts of Parliament are sometimes so worded as to make first directors shareholders to the extent of the shares

(*d*) *De Ruvigne's case*, 5 Ch. D. 306; *Carling, Hespeler, and Walsh's case*, 1 Ch. D. 115. Compare *Hay's case*, 10 Ch. 593, *ante*, p. 1077.

(*e*) See *Carriage Co-operative Supply Assoc.*, 27 Ch. D. 322, where the agreement was not registered; *Pearson's case*, 5 ib. 336; *McKay's case*, 2 ib. 1, and *ante*, pp. 940 *et seq.*

(*f*) As in *Forbes' case*, 8 Ch. 768; *Lord Claud Hamilton's case*, ib. 548; *Stock's case*, 4 De G. J. & Sm. 426; *Tothill's case*, 1 Ch. 85. See, too, *Bainbridge* v. *Smith*, 41 Ch. D. 463, where an article as to the vacation of office by directors was held not to apply to a managing director appointed under a special contract.

(*g*) As in *Cotterell's case*, 11 W. R. 13.

(*h*) *De Ruvigne's case*, 5 Ch. D. 306.

necessary to qualify them, and where this is the case such directors will without more be contributories in respect of such shares (*i*).

Repudiation of qualifying shares.

Where no qualification is necessary, the circumstance that a person has agreed to become a director, and has acted as such, will not make him a contributory in respect of shares allotted to him and placed in his name without his authority or knowledge; and if, in truth, he did not know that shares were in his name, knowledge of the fact will not be imputed to him on the ground that he might have seen the entries in the books if he had looked into them (*k*). But if the regulations of the company do require a director to hold a certain number of shares, and they are allotted to him and are registered in his name, he will be a contributory in respect of them (*l*), although he may not have applied for them or known of their allotment to him (*m*), provided he has not acquired other shares sufficient to qualify him within a reasonable time after his acceptance of office (*n*).

Still less can a director who accepts the shares necessary to qualify him take advantage of any want of formality, and repudiate them on the ground that he never was, properly speaking, a shareholder in respect of them (*o*).

Qualification may be obtained by transfer.

But generally speaking (*p*), a director is not bound by accepting office to obtain his qualification shares direct from the company; he may obtain them by purchase from other people, and if he obtains them within a reasonable time after he becomes a director he cannot be made a contributory in respect of any additional shares on the ground that he did not

(*i*) *Kincaid's case*, 11 Eq. 192, where shares had been allotted to the directors; *Forbes' case*, 19 Eq. 353; *Knox's and Nugent's case*, Ir. R. 11 Eq. 294; *O'Brien's case*, ib. 422, where no shares had been allotted. See, also, *Portal* v. *Emmens*, 1 C. P. D. 201 & 664, and *South London Fish Market Co.*, 39 Ch. D. 324.

(*k*) *Hallmark's case*, 9 Ch. D. 329.

(*l*) *Saunders' case*, 2 De G. J. & Sm. 101, is not opposed to this. It arose under older Acts.

(*m*) See the cases collected in the 2nd table *infra*, p. 1091.

(*n*) See *Ex parte Lord Inchiquin* [1891], 3 Ch. 28, and *infra*, note (*q*).

(*o*) *Walter's case*, 3 De G. & Sm. 149, affirmed on appeal, 19 L. J. Ch. 501; *Roney's case*, 4 De G. J. & S. 426; *Currie's case*, 3 De G. J. & S. 367. And see *Bird's case*, 4 De G. J. & S. 200, where the director applied for shares as agent.

(*p*) The regulations of the company may be exceptional. So if no shares could be obtained except

qualify himself soon enough, and ought to be treated as holding shares as soon as he accepted office or acted as a director (*q*).

General principles.

Assuming that qualification shares are necessary, then (in the absence of any special statutory enactment applicable to the case) the questions to be determined in each case are—1. Has the director expressly or impliedly agreed with the company to take the necessary shares from it? 2. Has he so acted as to be estopped from denying that he has so agreed? If either of these questions is decided against him he will be a contributory, but not otherwise. The state of the register is very important; for if he has been registered as a member in respect of his qualification shares his assent to take them will be readily inferred, and he will be a contributory unless he can prove that his name ought to be removed from the register even after the winding up has commenced (*r*). On the other hand, if he has not been registered as a member, the evidence against him must establish that he ought to be on the register in respect of the qualification shares.

The application of these principles depends on facts and inferences of fact, and, as might be expected, the cases on the subject are by no means all consistent. An attempt has been made below to classify the most important of them for convenience of reference, but the principles underlying them all will be found to be those stated above.

The cases apparently warrant the following inferences:—

Observations on the cases.

1. Notwithstanding § 16 of the Companies Act, 1862, rendering a company's articles binding on its members, a person who is a member (by subscribing the memorandum of association or by having shares), and who becomes a director, is not necessarily a contributory in respect of the shares necessary to qualify him for the office (*s*).

from the company, see *Hamley's case*, 5 Ch. D. p. 707.

(*q*) *Brown's case*, 9 Ch. 102; *Karuth's case*, 20 Eq. 506; *Marquis of Abercorn's case*, 4 De G. F. & J. 78. Compare *Ex parte Lord Inchiquin* [1891], 3 Ch. 28, where the other shares were acquired after a reasonable time had elapsed. What is a reasonable time depends in each case on the particular circumstances, see ib. p. 37.

(*r*) This was done in *Austin's case*, 2 Eq. 435.

(*s*) *Hutchinson's case* [1895], 1 Ch. 226; *Ex parte Cammell* [1894], 2

2. The Courts have often declined to infer an agreement by a director with the company to accept qualification shares from it, although he has accepted the office of director and acted as such without being qualified. The cases on this point, however, are by no means uniform; nor can they be expected to be so, as they all turn on inferences of fact (*t*).

3. If a company is wound up before the lapse of a reasonable time for the acquisition of qualification shares, directors who have not acquired them will not be contributories in respect of them (*u*).

4. So, if a person has agreed to become a director, but has changed his mind or has retired almost immediately, and has not accepted qualification shares, and has not agreed to take them otherwise than inferentially by being a director, he will not be a contributory (*x*). So if he retires on the ground that conditions on which he accepted office have not been fulfilled (*y*).

5. If the holding of qualification shares is a condition precedent to election as a director, and an unqualified person is elected and acts for a short time, and then retires before he obtains his qualifying shares, he will not be a contributory (*z*). His election will have been void. Nor in such a case will he be made a contributory if qualification shares are allotted to him after his retirement (*a*).

Ch. 392, affirming S. C. [1894], 1 Ch. 392 (a case of rectification of the register before the commencement of the winding up); *Karuth's case*, 20 Eq. 506; *Wheal Buller Consols*, 38 Ch. D. 42; and see *Hewitt's case and Brett's case*, 25 Ch. D. 283; and on the construction of § 16, *ante*, p. 456. Compare *Bilton Hotel Co.*, 9 L. R., Ir. 338.

(*t*) Compare the cases in the two tables below, and see the Irish case, *Re Bilton Hotel Co.*, 9 L. R., Ir. 338, where the director was held liable.

(*u*) *Hewitt's case and Brett's case*, 25 Ch. D. 283; *Wheal Buller Consols*, 38 Ch. D. 42. *Quære*, how far mere lapse of time is material when there has been no allotment, see *Hutchinson's case* [1895], 1 Ch. 226.

(*x*) *Marquis of Abercorn's case*, 4 De G. F. & J. 78, explained and approved in *Brown's case*, 9 Ch. 102; *Karuth's case*, 20 Eq. 506; *Barber's case*, 5 Ch. D. 963. See, also, *Ex parte Cammell* [1894], 2 Ch. 392, affirming S. C. [1894], 1 Ch. 392, and the next note.

(*y*) *Austin's case*, 2 Eq. 435; *Green's case*, 18 Eq. 428. Compare *Sidney's case*, 13 Eq. 228.

(*z*) *Hamley's case*, 5 Ch. D. 705; *Barber's case*, ib. 963; *Jenner's case*, 7 ib. 132.

(*a*) *Barber's case*, 5 Ch. D. 963. See, as to estoppel, *per* James, L. J., at p. 968.

6. A company's articles of association may be so worded that an acceptance of the office of director is equivalent to an agreement with the company to acquire the necessary qualification shares from it, unless such shares are acquired within a prescribed time. If in such a case a person accepts office, and does not acquire his qualification shares within the prescribed time, he will be a contributory in respect of them (*b*), even though he has not acted as a director (*c*), unless he has resigned his office before the prescribed time has expired (*d*).

7. A director may treat any shares he holds as qualification shares unless he has agreed to take them in addition to others (*e*).

8. Apart from any special circumstances, if a director is the registered holder of the requisite number of shares, he will be qualified, although the articles require him to hold them in his own right, and he may have mortgaged them or even have no beneficial interest in them (*f*). It is also sufficient, apart from special circumstances, if the shares are standing in his name jointly with other persons (*g*).

9. As regards paid-up shares, nothing need be added to what has been stated already when dealing with that subject (*h*). It has been said that shares which are nominally fully paid up cannot satisfy the requirements of the qualification clause (*i*); but if the company is bound to treat the shares as paid up, whether by reason of a duly registered contract or otherwise, that must be sufficient (*j*).

(*b*) *Isaacs' case* [1892], 2 Ch. 158.

(*c*) *Hercynia Copper Co.* [1894], 2 Ch. 403.

(*d*) *Salisbury Jones and Dale's case*, [1894], 3 Ch. 356; and compare the case in the last note.

(*e*) As he had in *Fowler's case*, 14 Eq. 316, and in *Ex parte Lord Inchiquin* [1898], 3 Ch. 28; but not in *Duke's case*, 1 Ch. D. 620, where *Fowler's case* is doubted, nor in *Dunster's case* [1894], 3 Ch. 473; *Brown's case*, 9 Ch. 102, and *Miller's case*, 3 Ch. D. 661, are the leading cases on this point.

(*f*) *Bainbridge* v. *Smith*, 41 Ch. D. 462; *Pulbrook* v. *Richmond Cons. Mining Co.*, 9 Ch. D. 610; *Cumming* v. *Prescott*, 2 Y. & C. Ex. 488. See, too, *Cooper* v. *Griffin* [1892], 1 Q. B. 740; *Howard* v. *Sadler* [1893], 1 Q. B. 1.

(*g*) *Dunster's case* [1894], 3 Ch. 473.

(*h*) *Ante*, pp. 1075 *et seq.*, and see the tables below.

(*i*) *Currie's case*, 3 De G. J. & S. 367.

(*j*) See *Brown's case*, 9 Ch. 102.

Companies Act, 1900.

The Companies Act, 1900, does not require directors to hold any qualification, but where a qualification is required by the company's regulations, it forbids (§ 2) any person to be named as a director in the articles of association or in the prospectus (*k*) of any company which is registered after the Act came into operation, and which invites the public to subscribe for its shares, unless he has either signed the memorandum of association (*kk*) for a number of shares not less than his qualification, or signed and filed with the registrar a contract to take from the company and pay for his qualification shares (*l*). It is presumed that a director who complies with these requirements will be liable to be placed on the list of contributories in respect of his qualification shares, even though the filed contract is entered into with a third party before the registration of the company. Moreover, the Act (§ 3) makes it the duty of every director who is required by the regulations of the company to hold a share qualification, and who is not already qualified, to obtain his qualification within two months of his appointment, or within such shorter period as may be fixed by the regulations of the company. If he fails to do this, or ceases to hold his qualification, his office is vacated; and if after that time has elapsed he acts as a director without holding the necessary qualification, he is liable to pay the company a sum of £5 for every day he so acts (*m*). It is conceived, however, that this section does not render him liable to be made a contributory in respect of his qualification shares merely by reason of his having so acted.

Acting as a director without a qualification does not amount to a misfeasance within § 10 of the Companies (Winding-up) Act, 1890 (*n*). Nor does it deprive a director of his right to remuneration (*o*).

(*k*) This does not apply to a prospectus issued after the expiration of one year from the date at which the company is entitled to commence business; see § 2 (3). As to what that date is, see § 6. For definition of a director and of a prospectus, see § 30.

(*kk*) As to subscribers of the memorandum, see *infra*, pp. 1093 *et seq.*

(*l*) § 2.

(*m*) § 3.

(*n*) *Coventry and Dixon's case*, 14 Ch. D. 660, a decision under § 165 of the Act of 1862. *Qu.* if this will apply to the liability under Comp. Act, 1900, § 3 (3).

(*o*) *Salton* v. *New Beeston Cycle Co.* [1899], 1 Ch. 775.

TABLE I.

Not contributories.

In the following cases directors were held not to be contributories in respect of their qualification shares: the Court coming to the conclusion that no agreement to take shares was established, and that the directors were not estopped from denying their due qualification:

Abercorn's case, 4 De G. F. & J. 78.

Director accepted office and was advertised, but he never acted, and did not know qualification was necessary.

See, also, *Mather* v. *National Ass. Assoc.*, 14 C. B. N. S. 676.

Karuth's case, 20 Eq. 506 (*p*).

Director subscribed memorandum and articles of association, and was advertised; but he withdrew from the company and never acted.

Brown's case, 9 Ch. 102.

Director had fully paid-up shares registered in his name, and no agreement to take others was proved.

Miller's case, 5 Ch. D. 70, and 3 ib. 661.

Director had fully paid-up shares to qualify him, and they were forfeited when he retired.

Hamley's case, 5 Ch. D. 705.

Barber's case, ib. 963.

Jenner's case, 7 Ch. D. 132.

In all of these the qualification was a condition precedent to election, and the directors were not duly elected, and they had retired before obtaining any shares.

Hewitt's case and Brett's case, 25 Ch. D. 283.
Wheal Buller Consols, 38 Ch. D. 42.

Directors signed the memorandum and articles of association, but had not had a reasonable time to qualify before winding up commenced. In Wheal Buller Consols directors had three months to qualify, and the winding up commenced directly afterwards.

Hutchinson's case [1895], 1 Ch. 226.

No time fixed for acquiring qualification. Company formed in March. B. & H. appointed first directors. Both accepted office, and B. signed memorandum of association for one share. H. did not. H. sent in resignation in July, which was accepted in October. Company proved abortive, and was wound up in December. B. & H. both struck off list. *Semble*, unless shares are allotted mere lapse of time after acceptance of office is immaterial.

Ex parte Cammell [1894], 2 Ch. 392, affirming [1894], 1 Ch. 528.

Directors might act for one month without acquiring qualification. C. accepted office, and without his knowledge shares were

(*p*) In all these cases the directors were put on the list for the shares for which they signed the memorandum of association.

Not contributories.

allotted to him. He attended one meeting after such allotment, but did not act after the expiration of the month. Secretary wrote to him asking him to apply for his qualification shares. He declined, and resigned. Subsequently his name was put on register, but Court ordered its removal.

N.B.—In this case there was no winding up.

Tothill's case, 1 Ch. 85.

Director signed memorandum and applied for qualification shares, but never got them. His name was in a list for the shares, but he did not know it. N.B.—The articles did not require directors named in them to qualify.

Compare *Roney's case*, 4 De G. J. & Sm. 426.

Stock's case, 4 De G. J. & Sm. 426.

Forbes' case, 8 Ch. 768.

Lord Claud Hamilton's case, 8 Ch. 548.

The last observation applies to these also.

Chapman's case, 2 Eq. 567.

Director signed memorandum and articles of association, and was named in them as a director. He applied for qualification shares, but never got them. He resigned.

Salisbury Jones and Dale's case [1894], 3 Ch. 356.

Qualification was the holding of a certain number of shares. By the terms of the articles, unless a director acquired his qualification within three months, he was to be deemed to have agreed to take them from the company. The directors had signed the memorandum, accepted office and acted, but no shares were allotted to them, and they resigned before the expiration of the three months. Compare *Hercynia Copper Co.*, *infra*, p. 1091.

Currie's case, 3 De G. J. & Sm. 367 (*q*),
Carling's case, 1 Ch. D. 115,
Arnot's case, 36 Ch. D. 702,
} *ante*, p. 1081.

are all cases in which directors were entitled to say that they were only liable, if at all, in respect of fully paid-up shares. *Arnot's case* was not a case of qualification shares.

Dunster's case [1894], 3 Ch. 473.

D. signed memorandum for shares sufficient to qualify him. D.'s firm sent in an application for the same number of shares, which were allotted to them and paid up by them. These shares were intended to be, and treated as, the same shares as those for which D. signed. Held that there was no agreement by D. to take any other than the fully paid shares. See *infra*, p. 1094.

Saunders' case, 2 De G. J. & Sm. 101.

Saunders was registered, but he was not liable to creditors as a member, and he was entitled to be indemnified by the company under the older Winding-up Acts, therefore he was not a contributory.

(*q*) As to the shares *a*, see *ante*, p. 1081, note (*a*).

Not contributories.

Hallmark's case, 9 Ch. D. 329.

Shares were registered in a director's name without his knowledge. No qualification shares were necessary.

Austin's case, 2 Eq. 435.

The director was on the register for the qualification shares, but he did not know it. He had retired on the ground that the conditions on which he became a director had not been performed.

N. B.—None of the above were registered in respect of unpaid-up shares, except *Austin*, *Saunders*, *Hallmark* and *Cammell*, but Cammell was registered after his resignation, and the company in his case was not being wound up.

TABLE II.

Contributories.

In the following cases directors were held to be contributories in respect of their qualification shares, the Court coming to the conclusion that an agreement to take them was established, or that the directors were estopped from denying their qualification:

Isaacs' case [1892], 2 Ch. 158.

By the terms of the articles a director was bound to acquire his qualification shares within one month. If he did not do so he was to be deemed to have agreed to acquire them from the company, and they were to be allotted to him. Isaacs had signed the memorandum of association for one share, had accepted office, and acted as a director; but had never applied for shares, and none (except the one for which he signed the memorandum) had been allotted to him. He was not on the register, except for the one share.

Hercynia Copper Co. [1894], 2 Ch. 403.

Similar articles. The director did not sign the memorandum, and, though he had accepted office, he had never acted as a director. He resigned his office, but not until after the month had expired.

Compare *Salisbury Jones & Dale's case* [1894], 3 Ch. 356, *ante*, p. 1090.

Ex parte Lord Inchiquin [1891], 3 Ch. 28.

Qualification, 40 shares. Lord Inchiquin accepted the office of director; before he acted 40 shares were allotted to him, and his name was placed on the register. He did not know this, and never applied for the shares. He acted as a director, and three months after his appointment he acquired 40 paid-up shares, which he had registered in his name, and resigned soon afterwards. The Court held him to be a contributory in respect of the unpaid shares, as the paid-up shares had not been acquired within a reasonable time after his appointment.

Leeke's case, 6 Ch. 469, and 11 Eq. 100.

Director had qualification shares allotted to him; they were registered in his name as paid up, which, however, they were not. He knew he had the shares, and acted as a director.

Harward's case, 13 Eq. 30.

Director acted, and had qualification shares allotted to him, but he did not know it.

Levita's case, 3 Ch. 36,

Bird's case, 4 De G. J. & Sm. 200,

were both cases of express application for shares by a director and registration in his name.

See, also, *Barrow's case, ante*, p. 1082; and *Roney's case* below.

Disderi & Co., 11 Eq. 242.

11 directors had qualification shares allotted to them and registered in their names as fully paid up, which, however, they were not.

Walter's case, 3 De G. & S. 149, affirmed 19 L. J. Ch. 501.

Qualification shares were placed in director's name with his consent; but the formalities necessary to make him a shareholder were not duly complied with.

Duke's case, 1 Ch. D. 620.

Fowler's case, 14 Eq. 316.

The question in these cases was how many shares over and above the qualification number the director was liable for. Each was decided according to his real agreement.

Currie's case, 3 De G. J. & Sm. 367 (*r*).

The directors had signed the articles which required them to hold 100 shares. They had voted themselves paid-up shares. They were treated as holders of 100 unpaid-up shares. Shares for which they had signed the memorandum were reckoned as part of their 100 qualification shares. *Currie* acted as a director; see 20 Eq. 510.

Esparto Trading Co., 12 Ch. D. 191.

Goddard had accepted the office of director, and had acted as such: he was registered in respect of his qualification shares; they had been marked in the books as cancelled, but they had not been duly forfeited.

Roney's case, 4 De G. J. & Sm. 426.

Roney acted as a director and agreed to take 100 shares; but there was no allotment of them, nor were they registered in his name.

Hay's case, 10 Ch. 593.

Hay had signed the memorandum of association for the shares for which he was held liable. The only question was, whether he had paid for them.

(*r*) The shares here referred to are those indicated as *b* and *c* in the report. See *ante*, pp. 1081 and 1082.

7. *Subscribers of the memorandum of association.*

Subscribers of the memorandum of association.

In companies formed under the Act of 1862, the subscribers (*s*) of the memorandum of association are members, and liable to be put on the list of contributories, although the memorandum may have been somewhat altered since they signed it (*t*); and although no shares may have been allotted to them, and they may never have been registered as shareholders (*u*); and although the directors may have cancelled the shares at the request of the subscribers (*x*). If, however, all the shares in the company have been duly allotted to other persons, so that none are left which a subscriber of the memorandum can hold, he will not be a contributory, but must be treated as having transferred his shares (*y*).

Felgate's case.

In *Felgate's case* (*z*) it was held that a person who signed the memorandum and articles of association was not a contributory, the articles having been altered after he signed them, but before they were registered. But it is very difficult to reconcile this decision with the provisions of the Act (*a*).

Allotment to subscribers.

Shares allotted to the subscribers of a company's memorandum of association are *primâ facie* allotted in respect of, or include, the shares subscribed for; consequently, unless there are circumstances to rebut this inference, a subscriber's liability is not for the number of shares subscribed for, *plus* the number allotted, but only for one of such numbers, or the larger of them if they are unequal (*b*).

(*s*) Signature by an agent is equivalent to signature by oneself, *Whitley Partners, Limited*, 32 Ch. D. 337.

(*t*) *Peel's case*, 2 Ch. 674; *Oakes* v. *Turquand*, L. R. 2 H. L. 325. Compare *Felgate's case*, 2 De G. J. & Sm. 456.

(*u*) *London and Provincial Consolidated Coal Co.*, 5 Ch. D. 525; *Sidney's case*, 13 Eq. 228; *Evans' case*, 2 Ch. 427; *Hall's case*, 5 Ch. 707. See, also, the cases in the next five notes.

(*x*) *Esparto Trading Co.*, 12 Ch. D. 191. Compare *Nicol's case*, 29 Ch. D. 421.

(*y*) *Mackley's case*, 1 Ch. D. 247; *Drummond's case*, 4 Ch. 772. See 4 Ch. 776. See, also, *Kipling* v. *Todd*, 3 C. P. D. 350.

(*z*) 2 De G. J. & Sm. 456, decided on 19 & 20 Vict. c. 47.

(*a*) See §§ 11, 18, and the cases in note (*t*), *ante*.

(*b*) *Gilman's case*, 31 Ch. D. 420; *Elliott's case*, W. N. 1866, p. 342.

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Duke's case.

In *Duke's case* (c) there were two classes of shares, A. shares and B. shares. Both classes were of the same nominal amount, but the B. shares were preference shares. A person subscribed the memorandum for 50 B. shares; but he applied for and had allotted to him 25 A. shares and 25 B. shares instead of 50 B. shares. It was sought to place him on the list in respect of 25 A. shares and 50 B. shares, but it was held that this being contrary to the intention of all parties, and the Act only requiring the memorandum to state the number of shares applied for, he was only liable to be a contributory in respect of 25 A. shares and 25 B. shares.

Dunster's case.

In *Dunster's case* (d) there was an arrangement between a firm of which Dunster was a member and the promoters of a company that his firm should take up and pay for 100 shares, in consideration of becoming the company's agents. Dunster was named as a director in the company's articles of association; the qualification of a director was the holding of 100 shares. Dunster signed the memorandum of association for 100 shares in his own name, but he did so, as was proved, as representing the firm, and because the registrar of joint stock companies would not accept a signature in the firm's name. Subsequently the firm sent in an application for 100 shares, which were allotted to them and paid up by them. Dunster became a director, but no shares were ever allotted to him in his own name. The company treated the allotment to his firm as satisfying his signature to the memorandum of association, and as his qualification as a director. The Court of Appeal, under these circumstances, held that there was only one contract to take 100 shares, and that this had been fulfilled by the allotment to the firm of the 100 shares which they had paid up, and that therefore Dunster was not liable to be put on the list of contributories.

Shares subscribed for when to be treated as paid up.

The shares which a subscriber to the memorandum agrees to take are *primâ facie* shares not paid up (e); and the acquisition by him of fully paid-up shares to which some one else

(c) 1 Ch. D. 620. See, also, *Maynard's case*, 9 Ch. 60.

(d) [1894], 3 Ch. 473, reversing Vaughan Williams, J.

(e) *Maynard's case*, 9 Ch. 60; *Hay's case*, 10 Ch. 593, where the shares were paid for out of the company's money. See, also, the

was entitled will not relieve him from his liability to be a contributory in respect of the shares for which he subscribed the memorandum of association (*f*). Before the passing of the Companies Act, 1867 (30 & 31 Vict. c. 131, § 25, already noticed and now repealed), it had been decided that if the memorandum or articles of association showed that the shares subscribed for were shares fully paid up, and the subscriber had given value to the company for them, he would not be a contributory in respect of any other shares (*g*), and that, if the articles of association stated that paid-up shares were to be issued to a subscriber of the memorandum, the shares for which he subscribed were *primâ facie* the same as those which he was entitled to receive under the articles of association; or in other words, shares paid in full (*h*). These cases may be usefully compared with *Dent's case* (*i*), where a person who subscribed the memorandum of association was held to be a contributory and liable to calls, although the articles of association declared that all the shares subscribed for were to be allotted as fully paid up (*ii*), and although the company was bound by agreement and by its articles to allot fully paid-up shares to a third person, or his nominees, of whom the subscriber was one. But Dent had paid nothing to the company in respect of any shares, and the allotment to him as a nominee of the promoter was not a fulfilment of his contract as a subscriber of the memorandum of association.

Dent's case.

With respect to companies to which the repealed section (§ 25) of the Companies Act, 1867, applied, it would seem that shares for which a person signed the memorandum of association could not be treated as paid up unless they were paid up in

Companies Act, 1867, § 25.

cases collected in Table II., *ante*, p. 1092, and the cases in the next four notes.

(*f*) See *Migotti's case*, 4 Eq. 238; *Forbes and Judd's case*, 5 Ch. 270; *Dent's case*, 15 Eq. 407, and 8 Ch. 768.

(*g*) *Baglan Hall Colliery Co.*, 5 Ch. 346; *Baron de Beville's case*, 7 Eq. 11. See note (*i*), *infra*. See, also, *Coate's case*, 17 Eq. 169; but *qu.* if that case was rightly decided, having regard to the Comp. Act, 1867, § 25.

(*h*) *Jones' case*, 6 Ch. 48; *Pell's case*, 5 ib. 11; *Drummond's case*, 4 Ch. 772. See the next note.

(*i*) *Dent's case*, 15 Eq. 407, and 8 Ch. 768; *Fothergill's case*, 8 Ch. 270.

(*ii*) Such an article cannot remove the obligation to pay for the shares in money or money's worth.

cash (*j*). The difficulty arose from the section requiring the contract under which the shares were to be paid for otherwise than in cash to be filed at or before the issue of the shares, and from the doctrine that the issue of the certificate of incorporation of the company operates as an issue of the shares for which the memorandum of association is signed (*k*). If the shares mentioned in the contract are clearly identified with the shares for which the memorandum of association was signed (*l*), and the contract was entered into with a trustee for the company (*ll*) and filed at the same time as the memorandum of association, or even if it was entered into and filed as soon as possible after the incorporation of the company and before the shares were in fact issued, this might perhaps be sufficient (*m*); but this view seems hardly consistent with the most recent decision on the subject, where the Court refused to grant relief under the Companies Act, 1898, apparently on the ground that the requirements of § 25 cannot be complied with in the case of shares for which the memorandum of association is signed (*mm*). Since the repeal of that section, the question has lost much of its importance (*n*).

8. *Holders of scrip.*

Shares in scrip companies.

With respect to scrip companies, *i.e.*, companies the shares in which pass by the delivery of the scrip certificate, he who, when the company is ordered to be wound up, is the *bonâ fide* holder of a certificate, and is *bonâ fide* entitled to a share as such holder, is a contributory in respect of such share (*o*).

(*j*) See *Re Jarvis & Co.* [1899], 1 Ch. 193; *Dalton Time Lock Co.* v. *Dalton*, 66 L. T. 704; *Whitehead & Bros., Ld.* [1900], 1 Ch. 804; *Archibald Daunay, Ld.*, W. N. 1900, p. 152, and *Ebenezer Timmins & Sons, Ld.* [1902], 1 Ch. 238.

(*k*) See *Dalton Time Lock Co.* v. *Dalton*, 66 L. T. 704, and the cases in the last note.

(*l*) There was no such identification in *Fothergill's case*, 8 Ch. 270.

(*ll*) See *ante*, p. 570, note (*a*), as to the sufficiency of such a contract.

(*m*) See the words "at or before" in § 25, and *Whitehead & Bros., Ld.* [1900], 1 Ch. 804.

(*mm*) *Ebenezer Timmins & Sons, Ld.* [1902], 1 Ch. 238, distinguishing *Whitehead & Bros., Ld.*, on the ground that in that case all the shares of the company had been issued.

(*n*) See as to the effect of the repeal, *ante*, p. 566.

(*o*) See *Grisewood and Smith's case*, *De Pass's case*, 4 De G. & J. 544; *Finlay Hodgson's case*, 26 Beav. 182; *Barclay's case*, ib. 177; *Shewell's case*, 2 Ch. 387, and the cases in notes (*t*) and (*u*), *infra*.

But as will be seen hereafter, *malâ fide* transfers of the certificates to persons who hold them for the transferors, will not enable the latter to escape from being made contributories (*p*). If, as sometimes happens, the scripholders are a distinct class from the shareholders, not enjoying the same rights, and not subject to the same liabilities, difficult questions arise as to the liability of the scripholders to be put on the list of contributories. A company of this sort has been ordered to be wound up on the petition of a transferee of scrip, but only on his admitting himself to be a contributory. The very fact, however, that this admission was required, shows that the Court was not satisfied that he would have been a contributory without it (*q*); and in other cases arising on the winding up of the same company it was held that even an allottee of scrip was not a shareholder (*r*).

As has been seen above (*s*), an agreement to take shares which, owing to the non-performance of conditions precedent or otherwise, cannot be specifically enforced, does not render the person who has agreed to take them a contributory. Allottees of scrip are frequently in this position; and when they are, they are not contributories. Thus, where scrip transferable to bearer is issued, and it is provided in substance that on registration of the scrip, shares will be exchanged for it, an allottee of scrip who transfers it without registering it (*t*), or whose scrip is forfeited for non-registration (*u*) (power to forfeit in such case being reserved), will not be a contributory, and it is very questionable whether he will if he holds the scrip and it remains unforfeited; unless, indeed, he is registered as a shareholder, and he allows himself so to continue.

Under the Companies Act, 1862, shares transferable to

(*p*) *Lund's case*, 27 Beav. 465; *Hyam's case*, 1 De G. F. & J. 75; *Costello's case*, 2 ib. 302. Compare *De Pass's case*, 4 De G. & J. 544. These will be noticed hereafter.

(*q*) *Littlehampton Steam Ship Co.*, 2 De G. J. & Sm. 521.

(*r*) *Ormerod's case*, 5 Eq. 110. Compare *Gregg's case*, 15 W. R. 82, where the allottee was registered as a member, and was held to be a contributory. See, also, *Weston's case*, 5 Ch. 614, where the son had caused the shares to be registered, and the father was put on the list.

(*s*) *Ante*, pp. 1070 *et seq.*

(*t*) *Eustace* v. *Dublin Trunk Rail. Co.*, 6 Eq. 182.

(*u*) *Ex parte Collum*, 9 Eq. 236; *Kelk's case*, ib. 107.

bearer, and not paid up in full, are illegal (*x*); the question who ought to be a contributory in respect of such a share in a company formed and registered under the Act, is by no means free from difficulty, and has not been decided. In such a case the only contributories appear to be the subscribers to the memorandum of association (*y*), and other duly constituted shareholders, if any, although they may have parted with their scrip (*z*).

9. *Trustees and Cestuis que trustent.*

Trustees contributories.

A trustee who is a shareholder is, like any other shareholder, liable to be made a contributory, and he must look for his indemnity to his *cestui que trust*. The trustee, as between himself and the other shareholders, is bound to contribute with them to the payment of the company's debts; and he, therefore, is in ordinary cases the person to be on the list. There are numerous cases to this effect in the books. The matter was considered and settled by the House of Lords in several cases of great hardship arising on the failure of the *City of Glasgow Bank*; there some of the persons held liable were described as trustees in the register of shareholders, but this circumstance was of no avail (*a*). Even if the trustee has not complied with all the formalites which ought to have been complied with according to the company's articles of association or deed of settlement, yet if the shares have been assigned to him and he has accepted them he will be a contributory in respect of them (*b*).

City of Glasgow Bank Cases.

Cestui que trust not a contributory.

The *cestui que trust* on the other hand is not liable to be put

(*x*) This has never been actually decided; but see *General Co. for Promotion of Land Credit*, 5 Ch. 363, and see Companies Act, 1867, § 27, *et seq.*

(*y*) But see the cases in note (*o*), *ante*.

(*z*) *McEuen* v. *West Lon. Wharves Co.*, 6 Ch. 655.

(*a*) *Muir* v. *City of Glasgow Bank*, 4 App. Ca. 337, and other cases, ib. 547; *Cuninghame* v. *City of Glasgow Bank*, ib. 607; *Cree* v. *Somervail*, ib. 648; *Lumsden* v. *Buchanan*, 4 Macqu. 950. Their liability is joint and several, *Gillespie* v. *City of Glasgow Bank*, 4 App. Ca. 632. See, also, *Davidson's case*, 3 De G. & Sm. 21; *Ex parte Jones*, 27 L. J. Ch. 666, and *Barrett's case*, 4 De G. J. & Sm. 416.

(*b*) *Hoare's case*, 2 J. & H. 229; *Ex parte Drummond*, 2 Giff. 189. Compare *Ex parte Scully*, 6 Ir. Ch. 72; and *Ex parte Hall*, 1 Mac. & G. 307, reversing 3 De G. & Sm. 80. Observe that in this case non-liability to creditors was relied on.

Bugg's case.

on the list. The leading case on this head is *Bugg's case* (*c*); there a person *bonâ fide* bought shares in the name of his brother, in order that it might not be known that he was himself connected with the company: there was evidence to show that the trustee was unable to meet the calls upon him, but the *cestui que trust* was held not a contributory. Moreover, subject to the observations which will be made hereafter on *malâ fide* transfers (*d*), it is immaterial whether the trustees acquire the shares by allotment, as in *Bugg's case*, or by transfer (*e*); and the fact that the object of the *cestui que trust* was to avoid liability will not make him a contributory (*f*).

Transfers into persons' names without their authority.

But although the general rule is that the trustee and not *cestui que trust* is a contributory, still, a person in whose name shares have been placed without his knowledge or consent, and who has not himself accepted them or ratified what has been done (*g*), cannot be made a contributory in respect of them (*h*).

Dishonest trusts.

Cox's case.

Again, the rule that the trustee, and not the *cestui que trust*, is a contributory, will not be adhered to where a departure from it is required in order to defeat fraud. In a case where a promoter of a company took a number of shares, and placed them in the names of various persons in order to swell the apparent number of shareholders, and so to deceive the public, he was put on the list in respect of all such shares; he was, in fact, treated as holding the shares in various names which he had chosen to assume for purposes of his own (*i*). Whether his nominees were also liable to be put on the list was not decided, but was expressly left open for determination (*k*). So where a father bought shares from a company in the name

(*c*) 2 Dr. & Sm. 452. See, also, *Fenwick's case*, 1 De G. & S. 557; *Newry and Enniskillen Co.* v. *Moss*, 14 Beav. 64; *Wilson* v. *Keating*, 27 Beav. 121, and 4 De G. & J. 588.

(*d*) See *infra*, class B.

(*e*) *King's case*, 6 Ch. 196; *Mitchell's case*, 9 Eq. 363.

(*f*) *Williams' case*, 1 Ch. D. 576; and the cases in the last note.

(*g*) A ratification of a transfer previously made without authority is sufficient. *Ker's case*, 4 App. Ca. 549, 598. Compare *Bell's case*, 4 App. Ca. 547 (*Janet Hill's case*).

(*h*) *Pim's case*, 3 De G. & S. 11, and 1 Mac. & G. 291; *Henessey's Ex. case*, 3 De G. & S. 191, and 2 Mac. & G. 201, in both of which the evidence of acceptance was insufficient.

(*i*) *Cox's case*, 4 De G. J. & Sm. 53, on appeal from the Stannaries. Compare *King's case*, 6 Ch. 196.

(*k*) See, as to this, *Barrett's case*, 4 De G. J. & Sm. 416, and *Davidson's case*, 3 De G. & Sm. 21.

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of a son, who was under age, the father was placed on the list, the son's name being treated as his (*l*).

Name of trustee treated as name of *cestui que trust.*

So where a person procured a married woman to apply for shares for him, and she did so, and shares were allotted to her, it was held that he was a contributory: her name being treated as his own disguised (*m*).

Malâ fide transfers.

Upon the same principle, viz., in order to defeat fraud, if a person transfers his shares to a nominee of his own, in order to put the nominee forward in case of reverse, but at the same time to retain for himself whatever advantages may accrue from the shares, the real owner will be treated as himself holding the shares, and will be placed on the list accordingly (*n*).

In all these cases the dishonest purpose of the trust prevents its recognition for the purpose for which it was created, and the person who in reality agreed to take the shares is made liable for them. This agreement is the basis of his liability. If, therefore, a man acting in concert with the directors of the company has procured shares to be placed in the name of another without his authority merely to deceive the public, and there was never any agreement by him or his nominee to take the shares, or any intention that he or his nominee should be liable in respect of them, then although he and the directors may be liable in damages for the fraud, neither he nor his nominee can be placed on the list of contributories in respect of the shares (*o*).

Coventry's case.

Name used to avoid liability.

A purchase of shares in the name of a person to avoid liability does not entitle the company to put the purchaser on the list, if the transaction is a real transaction (*p*).

Holders of shares passing by delivery.

Further, in companies, the shares of which are transferable by delivery of certificates, the person who may happen to hold the certificates for another when the company is ordered to be

(*l*) *Weston's case*, 5 Ch. 614; *Richardson's case*, 19 Eq. 588. Compare *Ex parte Scully*, 6 Ir. Ch. 72, and *Coventry's case* [1891], 1 Ch. 203.

(*m*) *Pugh and Sharman's case*, 13 Eq. 566. Compare *London, Bombay and Mediterranean Bank*, 18 Ch. D. 581, where there was no fraud.

(*n*) *Chinnock's case*, Johns. 714, and others of that class noticed *infra*, under class B., p. 1123. Compare *Williams' case*, 1 Ch. D. 576.

(*o*) *Coventry's case* [1891], 1 Ch. 203.

(*p*) *Ante*, p. 1099.

wound up, is not necessarily the proper person to be on the list of contributories. Whether he is, or is not, depends upon whether he held them as a principal and legal owner, or simply as the agent of the person to whom they belonged. This is shown by *Finlay's case* (*q*), which arose in winding up a scrip company. In this case Messrs. Finlay & Co., who were merchants and bankers, were the allottees and holders of 1,455 shares. Of these, sixty were their own, and the rest belonged to their customers. Messrs. Finlay & Co., however, received all dividends and paid all calls on all the shares, and they did so in their own names, without making any distinction between the shares which belonged to themselves and those which did not. One at least of the directors of the company knew that Messrs. Finlay & Co. held shares as agents merely. It was decided that Messrs. Finlay & Co. were contributories only in respect of the sixty shares which were their own. The shares in this case were transferable by delivery, there was no rule of the company to the effect that trusts should be ignored, and there was, therefore, no reason why the *cestui que trustent* should not be treated as the holders of the shares. It may, however, be doubted, whether it therefore followed that the agents could not have been treated as the holders; for their principals were undisclosed.

Finlay's case.

A person who holds shares in a company as a trustee for that company, is obviously entitled to be indemnified by the company against all losses (*r*), unless the transaction in respect of which he holds the shares is *ultra vires*, or fraudulent, and not binding on the shareholders (*s*). It

Trustees for company.

(*q*) *Finlay, Hodgson's case*, 26 Beav. 182, and 27 L. J. Ch. 664. See, also, *Shewell's case*, 2 Ch. 387. The company had no deed of settlement, and was not incorporated. It had a prospectus, which set out the constitution and regulations of the company, so far as it had any. The scrip certificates declared that the holder was (or on making certain payments would be) entitled to a certain number of shares in the company. The certificates passed by delivery, and the holder was treated as the owner. See *ante*, pp. 1096 *et seq.*, as to scrip.

(*r*) *James* v. *May*, L. R. 6 H. L. 328; *Ex parte Oriental Commercial Bank*, 3 Ch. 791.

(*s*) In a case of fraud the trustee could be fixed with the shares, whilst his right to indemnity might be repudiated. See *Ex parte Daniell*, 1 De G & J. 372, and 23 Beav. 568; *Nickoll's case*, 24 Beav. 639; *Davidson's case*, 3 De G. & Sm. 21.

follows from this, that where the transaction is valid, the trustee ought not to be on the list of contributories except in respect of his liability to creditors; and under the older Winding-up Acts he would not have been a contributory at all (*t*). But as regards companies registered under the Companies Act, 1862, members are contributories although they may be trustees for the company; their right to indemnity can only be taken into account when the creditors have been paid, and the rights of the contributories *inter se* come to be adjusted. This point was decided by the V.-C. Wood, in *Chapman and Barker's case* (*u*), where a shareholder in a company borrowed money of it, and transferred his shares to a trustee for the company as a security for the loan. The trustee was put on the list.

Chapman and Barker's case.

Trustee's right of indemnity.

A trustee of shares is entitled to be indemnified by his *cestui que trust* against all calls paid and to be paid, and all expenses properly incurred by the trustee in the execution of his trust (*x*), and he may obtain a declaration of his right to an indemnity before any call upon him has been made (*y*).

Trustee insolvent.

It not unfrequently happens that the trustee is insolvent, while the *cestui que trust* is not. Even under these circumstances the *cestui que trust* cannot be put on the list of

Compare *Saunders' case*, 2 De G. J. & Sm. 101.

(*t*) *Saunders' case*, 2 De G. J. & Sm. 101. Observe that there the creditors could not have succeeded at law against Saunders.

(*u*) 3 Eq. 361. See, also, *Cree* v. *Somervail*, 4 App. Ca. 648, and *Munster Bank, Limited*, 17 L. R., Ir. 341; *Ennis and West Clare Railway Co.*, 3 L. R., Ir. 187. The Court will not rectify the register and treat the trustee as not a member after the company has gone into liquidation, see *Cree* v. *Somervail*, *ubi sup.* *Quære* if it will do so before, see *Beattie* v. *Lord Ebury*, L. R. 7 H. L. 102. In *Gray's case*, 1 Ch. D. 664, where the trustee was never registered as a holder, and it was agreed that he should not be, he was held not a contributory.

(*x*) See *Hardoon* v. *Belilios* [1901], A. C. 119; *Evans* v. *Wood*, 5 Eq. 9; *Loring* v. *Davis*, 32 Ch. D. 625; *Cruse* v. *Paine*, 6 Eq. 641, and 4 Ch. 441; *Butler* v. *Cumpston*, 7 Eq. 16; *James* v. *May*, L. R. 6 H. L. 328, and see *Hughes-Hallett* v. *Indian Mammoth Gold Mines Co.*, 22 Ch. D. 561. As to an executor's right to be indemnified against calls made after the distribution of his testator's estate, see *Whittaker* v. *Kershaw*, 45 Ch. D. 320.

(*y*) *Hobbs* v. *Wayet*, 36 Ch. D. 256; *Wolmershausen* v. *Gullick* [1893], 2 Ch. 514. Compare *Hughes-Hallett* v. *Indian Mammoth Gold Mines Co.*, 22 Ch. D. 561.

contributories (*z*). Whether in such a case the company can compel the trustee to enforce his right of indemnity, and so reach the *cestui que trust*, has not been decided (*a*).

Resignation of trustee.

A trustee who is a shareholder does not terminate his liability to the company by a mere resignation of his office; in order to do this he must transfer his shares, or in some other way cease to be a shareholder (*b*).

10. *Mortgagees.*

Mortgagees.

Price and Brown's case.

The principle on which a trustee is made a contributory applies to mortgagees. *Price and Brown's case* (*c*) shows that a person who holds shares standing in his name only as a security for a debt, and is known to do so by the directors of the company, is as much a contributory as if he were the absolute owner of such shares. But an equitable mortgagee of shares is in the same position as a *cestui que trust*, and not a contributory (*d*). If a company borrows money on the security of its own shares, which are transferred to the mortgagee, it has been held that the mortgagee will not be a contributory and that the Court will rectify the register so as to give effect to the real intention of the parties (*e*). But this requires reconsideration, and seems inconsistent with the cases that show that persons registered as holders of shares are contributories, although they hold them in trust for the company (*f*).

(*z*) *Bugg's case, ante*, p. 1098; *Williams' case*, 1 Ch. D. 576.

(*a*) See *Hemming* v. *Maddick*, 9 Eq. 175, affirmed 7 Ch. 395; *Massey* v. *Allen*, 9 Ch. D. 164, and *British Nation Life Ass. Assoc.*, 8 Ch. D. at p. 708. If the trustee were made bankrupt, his trustee in bankruptcy could, it is conceived, enforce the right to indemnity; and what was recovered would be distributable like the rest of the bankrupt's estate.

(*b*) *Alexander Mitchell's case*, 4 App. Ca. 548 & 567; *Rutherfurd's case*, ib. 548 & 581; *Buchan's case*, ib. 549 & 583; *Ker's case*, ib. 549 & 598.

(*c*) 3 De G. & Sm. 146; *Weikersheim's case*, 8 Ch. 831; *Royal Bank of India's case*, 7 Eq. 91, and 4 Ch. 252; *Addison's case*, 5 Ch. 294. As to the mortgagee's right to indemnity from his mortgagor, see *Phené* v. *Gillan*, 5 Ha. 1.

(*d*) *Sichell's case*, 3 Ch. 119, where, however, the company had refused to register the mortgagee. See, also, *Gray's case*, 1 Ch. D. 664.

(*e*) *South-Eastern Rail. Co.'s claim*, 14 Eq. 10; *Beattie* v. *Lord Ebury*, L. R. 7 H. L. 102.

(*f*) *Chapman and Barker's case*, 3 Eq. 361, *ante*, p. 1102.

11. *Persons under disability.*

a) Companies holding shares in other companies.

Companies holding shares.

A company holding shares in another company is a contributory in respect of such shares, unless to hold shares is beyond the power of the shareholding company (*g*). It is not necessary that the transfer to the holding company should be executed by it under its corporate seal (*h*). Partners who hold shares in the name of their firm are contributories in respect of them (*i*).

b) Married women and their husbands (k).

Married women shareholders.

Before the Married Women's Property Act, 1882, it was decided that if a company chose to deal with a married woman as a principal, and not as the agent of her husband, and she being known to the company to be a married woman, was allowed to become a shareholder in her own right; and if further, by the rules of the company, her husband was not a shareholder in respect of her shares, and she had no separate estate, then, on the winding up of the company, neither she nor her husband was a contributory. Not the wife, because she was not capable of binding herself by contract; not the husband, because, *ex hypothesi*, he had nothing to do with the shares or the company, and the latter had not dealt with his wife as his agent (*l*). In *Angas's case* (*m*), a lady known to a company to be married, bought shares, and was accepted as a shareholder in respect of them, without any participation on the part of her husband. He received the dividends, but always as her agent; he attended meetings, and once held a proxy for another shareholder; his name had been placed on the list of shareholders, but this had been done without the knowledge either of himself or his wife. He was held not to be a contributory; for, by the rules of the company, he was not a shareholder in respect of her shares.

Angas's case.

London, Bombay, and Mediterranean Bank.

Again, in the *London, Bombay, and Mediterranean Bank* (*n*),

(*g*) As in *Ex parte British Nation Life Ass. Assoc.*, 8 Ch. D. 679, and see *Ex parte Contract Corporation*, 3 Ch. 105; *Royal Bank of India's case*, 4 ib. 252, and 7 Eq. 91.

(*h*) Ib.

(*i*) *Weikersheim's case*, 8 Ch. 831.

(*k*) See *ante*, p. 57.

(*l*) *Ex parte Rhodes*, 7 W. R. 510.

(*m*) 1 De G. & S. 560. Compare *Luard's case*, 1 De G. F. & J. 533.

(*n*) 18 Ch. D. 581, and compare *Pugh & Sharman's case*, 13 Eq. 566.

a merchant applied for shares in a limited company in the name of his wife: and shares were allotted to her accordingly. The husband subscribed the memorandum and articles of association for his wife, and paid the deposit money and all calls made on the shares for her, and subsequently transferred some of the shares, executing the transfers in her name or on her behalf. The wife had no knowledge of any of these transactions. The wife's name as "M., the wife of S." was on the register. She had no separate estate, and the liquidator sought to put the executors of the husband, who was then dead, on the list of contributories, on the ground that the husband was the true owner of the shares, and that the wife's name had only been used to enable him to escape liability. V.-C. Hall, however, held that the liquidator was not entitled to do this, as the company had accepted the wife as a shareholder without any misrepresentation or concealment on the part of the husband.

Female shareholder marrying

The case of a woman holding shares and marrying is specially provided for by the Companies Act, 1862. In such a case her husband is liable during the continuance of the marriage to contribute what she would have been liable to contribute if she had not married (*o*). She also is liable in respect of her separate estate, if any, under § 13 of the Married Women's Property Act, 1882 (*p*). Further, in the event of her surviving her husband, she will be liable in respect of such shares (*q*). Both she and her husband ought therefore to be on the list. His liability does not appear to be limited in this case to the amount of the property he acquired from his wife (*r*); but as between him and her he is entitled to be indemnified out of her separate estate (*s*).

Effect of Married Women's Property Act, 1882.

By the Married Women's Property Act, 1882, shares standing in the sole name of a married woman are deemed to belong to her for her separate use unless the contrary can be proved (*t*),

(*o*) Compare §§ 78, and 38 & 74, and see *Ex parte Hatcher*, 12 Ch. D. 284, decided on this Act and the Married Women's Property Act, 1874; *Bell's case*, 4 App. Ca. 550.

(*p*) 45 & 46 Vict. c. 75, § 13.

(*q*) Ibid., and see under the old law *Burlinson's case*, 3 De G. & S. 18; *Sadler's case*, ib. 36; *White's case*, ib. 157; *Kluht's case*, 3 De G. & S. 210. See, also, *Luard's case*, 1 De G. F. & J. 533.

(*r*) See note (*o*), and 45 & 46 Vict. c. 75, § 14.

(*s*) See note (*p*).

(*t*) 45 & 46 Vict. c. 75, §§ 6 & 7, *ante*, p. 59.

and her husband ought not now to be put on the list (*u*) in respect of them unless his wife held the shares before her marriage (*x*). She will be liable to be on the list in respect of her separate estate (*y*), but not further: so that if she has no separate estate except the shares in question and the company is not solvent no one will be liable to contribute in respect of her shares.

If shares belonging to a married woman having separate estate are held by trustees for her, they will be the contributories, and will be entitled to indemnity out of her separate estate (*z*). So, too, if a married woman is entitled to the residuary estate of a testator as her separate property, and such residue consists partly of shares still standing in the testator's name, she will be bound to indemnify the executors against calls upon the shares made after the distribution of the estate (*a*).

If the married woman is herself a trustee she and her husband ought apparently to be both on the list (*b*).

c) *Infants.*

Infant shareholders.

The writer is not aware of any case in which an infant has been put on the list of contributories. Upon principle, however, there does not appear to be any reason why he should not, if it be for his benefit; and this, if there are surplus assets, may be the case (*c*). Except, however, where it is for an infant's benefit to accept shares, and with them the burdens attaching to them, it is not easy to see how an infant can be held to be a contributory. In the ordinary case of an insolvent company, the infant's shares would be repudiated (*d*). The principle

(*u*) See ib. §§ 6 & 13. See, as to the old law, *Luard's case*, 1 De G. F. & J. 533.

(*x*) See *Ex parte Hatcher*, 12 Ch. D. 284, noticed above.

(*y*) So under the old law, see *Matthewman's case*, 3 Eq. 781; *Luard's case*, 1 De G. F. & J. 533.

(*z*) *Butler* v. *Cumpston*, 7 Eq. 16, and see *ante*, pp. 801 *et seq.*, as to trustees.

(*a*) *Whittaker* v. *Kershaw*, 45 Ch. D. 320.

(*b*) See *Bell's case*, 4 App. Ca. 547, the order made as to Janet Hill, p. 562.

(*c*) See *ante*, p. 55. The 39th section of the Act of 1848 (11 & 12 Vict. c. 45, § 39), which enacted that if any contributory were a minor, he might attend the proceedings in the winding up by his father or guardian, evidently contemplated the possibility of an infant's being a contributory.

(*d*) See *Reid's case*, 24 Beav. 318. If he has received no benefit from the shares, he may prove in the winding up for what he paid for them, *Hamilton* v. *Vaughan Sherrin*

acted on in *Oakes* v. *Turquand* (*e*), has never been applied to infants. If an infant fraudulently represented himself as of age, he might perhaps be fixed (*f*); but nothing short of this can, it is conceived, deprive him of his right of repudiation. Even if he signs the memorandum of association, he will, it is submitted, not be bound (*g*).

If an infant shareholder does not repudiate his shares either whilst he is an infant or within a reasonable time after he attains twenty-one, he will be a contributory (*h*); *à fortiori* will he be so if, after attaining twenty-one, he does anything inconsistent with his right of repudiation, *e.g.*, acts as a shareholder, receives a dividend, or pays a call (*i*). But if he is an infant when the winding up commences, or if he is not then precluded from repudiating his shares, he does not lose that right by mere delay. Thus in *Shrapnell's case* (*k*), an infant who had applied and paid for shares, and had paid calls, and received dividends, attained his majority one week before the company stopped payment; three months afterwards he was settled on the list of contributories after due notice, but he paid no attention to the notice, and allowed the time for varying the chief clerk's certificate to expire. A call was afterwards made upon him as a contributory, and he then took out a summons for leave to apply to vary the chief clerk's certificate putting him on the list. This leave was granted on payment by the infant of the costs of the application. He then applied to vary the certificate, and to be removed from the list of contributories, and he was struck off. He had done nothing after attaining twenty-one which could be regarded as an election to take the shares, and his repudiation was held not to be too late (*l*). It has been decided in other cases that a person who

Shrapnell's case.

Electrical, &c., Co. [1894], 3 Ch. 589.

(*e*) *Ante*, pp. 1044 and 1067.

(*f*) See *Wright* v. *Snowe*, 2 De G. & S. 321.

(*g*) See §§ 11 & 18 of the Companies Act, 1862. § 18 renders the infant a member, but does not exclude his right to repudiate.

(*h*) *Ebbett's case*, 5 Ch. 302. See *ante*, p. 55, and the next note. See the curious case of a female infant trustee marrying after she attained 21, *Bell's case*, 4 App. Ca. 547; *Janet Hill's case*, p. 562.

(*i*) *Lumsden's case*, 4 Ch. 31; *Mitchell's case*, 9 Eq. 363.

(*k*) *Shrapnell's case*, *Re Barned's Banking Co.*, before Lord Romilly, at Chambers, 24 April, 1867.

(*l*) See, also, *Mann's case*, 3 Ch. 459, note; *Capper's case*, ib. 458;

was an infant when the winding up commenced cannot on his attaining twenty-one elect to hold shares transferred to him, and thereby defeat the right of the company to reject him, and to have his transferor put on the list in his place (*m*).

Right of the company to reject an infant.

The right of a company to reject an infant transferee, and to put his transferor on the list, is clearly established (*n*); but this right may be lost by the company's own laches prior to the winding up (*o*); and if an infant transferee has himself transferred his shares, and his transferee has been accepted as a shareholder, the transfer to the infant cannot be treated as a nullity (*p*).

Shares taken in name of infant.

Where shares are taken direct from the company in the names of infants, the persons who really take them, and not the infants, will be contributories (*q*); unless the infant and the company are precluded from repudiating them. Even in the case of a transfer to an infant, if his name is a mere alias for that of some other person, such person may be put on the list, and the company, although entitled to fall back on the transferor, is not bound to do so (*r*).

d) Lunatics.

The writer is not aware of any decision on lunatic contributories. The principles applicable to them have been already alluded to (see *ante*, p. 56).

12. *Representatives.*

a) Executors, heirs, and devisees.

Shares in joint names.

If shares are registered in the names of more persons than one, and one dies, the survivors and not his executors are contributories in respect of them (*s*).

Hart's case, 6 Eq. 512; *Curtis's case*, ib. 458; *Weston's case*, 5 Ch. 614; *Baker's case*, 7 Ch. 115, where there was some evidence of adoption.

(*m*) *Symon's case*, 5 Ch. 298; *Castello's case*, 8 Eq. 504.

(*n*) See the last two notes.

(*o*) *Parson's case*, 8 Eq. 656; *Maxwell's case*, 24 Beav. 321.

(*p*) *Gooch's case*, 8 Ch. 266, reversing S. C. 14 Eq. 454.

(*q*) See *Weston's case*, 5 Ch. 614; and compare *London, Bombay, and Mediterranean Bank*, 18 Ch. D. 581; *Pugh and Sharman's case*, 13 Eq. 566 and cases *ante*, p. 1100.

(*r*) *Richardson's case*, 19 Eq. 588, and *infra*, pp. 1125 *et seq.*

(*s*) *Hill's case*, 20 Eq. 585. The executors might be put on as representing a past member.

Executors of deceased shareholders.

Although the executors of a deceased shareholder may not be themselves shareholders, they will nevertheless be liable to be placed as executors on the list of contributories in respect of the shares held by their testator (*t*). Moreover, an executor is liable to be made a contributory as executor, if his testator was virtually, although, owing to the non-compliance with certain forms, not perhaps strictly, a shareholder (*u*). So, although the shares were such as the directors had no right to create (*x*), or, although more than three years have elapsed since the testator's death, and the company is one in which shareholders are not liable to creditors for more than three years after their retirement (*y*); or, although the debts of the company have been incurred since the testator's decease (*z*); or, although the executor swears he has no assets, and has wound up the estate (*a*). Even if a share has been bequeathed and the executor has assented to the bequest, he will still be a contributory in his character of executor, if the legatee has not been accepted by the company as a shareholder in respect of the share in question (*b*). If the executor is himself legatee, he will be a contributory as executor only until he has himself been accepted as a shareholder (*c*).

When executor not liable.

But if a share is bequeathed and the executor has assented to, and the legatee has accepted the bequest, and the company has accepted the legatee as a shareholder in respect of such share, then, on the subsequent winding up of the company, the legatee and not the executor is the person to be made

(*t*) Comp. Act, 1862, §§ 76, 99, 105. *Baird's case*, 5 Ch. 725; *Thomas's case*, 1 De G. & S. 579.

(*u*) *Straffon's Executors' case*, 1 De G. M. & G. 576; *Ex parte Dixon's Executors*, 1 Dr. & Sm. 225.

(*x*) *Robinson's Executors' case*, 2 De G. M. & G. 517, and 13 Jur. 438, where a deceased director had taken shares which the company might have repudiated. Compare *ante*, pp. 1065 *et seq.*

(*y*) *Gouthwaite's case*, 3 Mac. & G. 187. See, also, *Powis* v. *Butler*, 3 C. B. N. S. 645, and 4 ib., 469.

(*z*) *Baird's case*, 5 Ch. 725; *Ex parte Blakeley's Executors*, 3 Mac. & G. 726, and 13 Beav. 133; *Hamer's Devisees' case*, 2 De G. M. & G. 366.

(*a*) *Thomas's case*, 1 De G. & S. 579; *Crosfield's case*, 2 De G. M. & G. 128. See *Henderson* v. *Gilchrist*, 17 Jur. 570, *ante*, p. 732.

(*b*) *Keene's Executors' case*, 3 De G. M. & G. 272; *Crosfield's case*, 2 ib. 128, and 4 De G. & S. 338; *Hamer's Devisees' case*, 2 De G. M. & G. 366, and 3 De G. & S. 279.

(*c*) *Bulmer's case*, 33 Beav. 435.

Effect of winding up estate of deceased on the faith of statements made by the company.

contributory (*d*); and if an executor applies to the directors to know what shares his testator had in the company, and is told none or a certain number only, and the executor acts upon the faith of this statement and winds up the estate of the deceased, transferring those shares, if any, which, according to the statement of the directors, belonged to him, and the company is afterwards wound up, the executor cannot be made a contributory; although his testator may in fact have had shares in the company other than those mentioned by the directors (*e*).

Rights against estate.

The liquidator is entitled to bring an action for the administration of the estate of a deceased shareholder, and to prove against the estate for all calls made and to be made, and he is entitled to have a fund set apart to meet such claim (*f*). Executors of a deceased shareholder cannot, so long as the shares are standing in the name of the testator or in their own names as his executors, safely distribute his estate without providing for future calls (*g*); but if they do distribute the estate while the company is still carrying on business without making such provision, they can compel the residuary legatee to refund the amount paid by them in respect of calls made after the distribution (*h*).

Heirs and devisees of realty.

If a deceased shareholder's personal estate is insufficient to pay his debts, his heir or the devisees of his real estate may be made contributories (*i*). They may be added to

(*d*) See the cases cited in the last two notes, and *post*, under head B. I. pp. 1120 *et seq.* *Crosfield's case*, 2 De G. M. & G. 128, and 4 De G. & S. 338, may be referred to with reference to the acceptance of one of several executors as a shareholder. See, too, *Pim's case*, 3 De G. & S. 11.

(*e*) *Meux's Executors' case*, 4 De G. & S. 331, and 2 De G. M. & G. 522.

(*f*) Comp. Act, 1862, §§ 76 and 95, cl. 7, and Companies (Winding-up) Act, 1890, § 12 (2). *Re Muggeridge*, 10 Eq. 443; *Buck* v. *Robson*, 10 Eq. 629; *Turquand* v. *Kirby*, 4 Eq. 123.

(*g*) See *Taylor* v. *Taylor*, 10 Eq. 477.

(*h*) *Whittaker* v. *Kershaw*, 45 Ch. D. 320; *Jervis* v. *Wolverstan*, 18 Eq. 18. *Sed qu.* if the company is being wound up before the distribution, see 45 Ch. D. p. 326; Comp. Act, 1862, § 75. See, too, *Christie* v. *Taunton, Delmard, &c., Co.* [1893], 2 Ch. pp. 184-5.

(*i*) Comp. Act, 1862, §§ 76, 99, 105. *Hamer's Devisees' case*, 2 De G. M. & G. 366, reversing S. C., 3 De G. & S. 279. See *Broughton* v. *Hutt*, 3 De G. & J. 501, as to setting aside deeds executed by heirs

the list when it becomes necessary to have recourse to them (*k*).

Effect of transfer by executor.

After the shares of a deceased shareholder have been duly transferred by his executors, they cease to be liable to be made contributories in respect thereof. This will be seen hereafter, when the position of persons who have ceased to have any connection with the company is being considered. It may, however, here be observed that, unless the constitution of a company warrants the surrender of shares, executors who surrender the shares of their testator do not thereby get rid of their liability to be made contributories (*l*).

Executors becoming shareholders.

If executors themselves become shareholders, they will be contributories, without reference to the character in which they became entitled to the shares taken by them. Thus, where the directors of a company offered reserved shares to the shareholders and the executors of deceased shareholders in proportion to the amount of their original shares, and the executors of a late shareholder accepted some of such reserved shares, but accepted them only in their representative character, they were nevertheless put on the list of contributories in respect of these shares without any qualification (*m*).

Executors, however, do not render themselves personally liable as shareholders by keeping a testator's shares and receiving the dividends until the shares are sold (*n*); and even

or devisees on the assumption that the shares were real estate.

(*k*) Comp. Act, 1862, § 99.

(*l*) *Ex parte Richmond's Executors*, 13 Jur. 727.

(*m*) *Fearnside and Dean's case*, and *Dobson's case*, 1 Ch. 231. See, also, *Duff's Executors' case*, 32 Ch. D. 301; *Jackson* v. *Turquand*, L. R. 4 H. L. 305; *Spence's case*, 17 Beav. 203, where the executors had purchased shares. Compare *Pim's case*, 3 De G. & S. 11, where the acceptance by the executor was held not to bind him. In *Mallorie's case*, 2 Ch. 181, the applicant was not executor, but acted for him.

(*n*) See *Bulmer's case*, 33 Beav. 435, where the executor was legatee of the shares. See, also, *Armstrong's case*, 1 De G. & S. 565; *Gouthwaite's case*, 3 Mac. & G. 187, and 3 De G. & S. 258; *Doyle's case*, 2 Hall & T. 221; *Hamer's Devisees' case*, 2 De G. M. & G. 366; *Crosfield's case*, ib. 128, and 4 De G. & S. 338. In *Pim's case*, 3 De G. & S. 11, the shares exchanged by the executor were in no sense his testator's. See the analogous case of a trustee in bankruptcy, noticed *infra*, note (*x*).

if the shares of the deceased are registered by the company in the names of the executors they will not be personally liable unless they authorised or ratified the registration (*o*).

b) Trustees in bankruptcy.

Position of the bankrupt.

A bankrupt member of a company being wound up under the Companies Act, 1862, who has obtained his order of discharge under the Bankruptcy Act, 1869, or under the Bankruptcy Act, 1883, is not a contributory either as a present (*p*) or as a past member (*q*); nor was he under the older Acts, unless he retained his shares and remained a member after his order of discharge, and the company was ordered to be wound up at some subsequent period, in which case his order of discharge did not protect him (*r*).

Position of the trustee in bankruptcy.

By the Companies Act, 1862, the trustee of a bankrupt contributory represents him, and is "deemed to be" a contributory accordingly, and can be required to admit to proof against the bankrupt's estate what is due from him in respect of his liability to contribute (*s*); and not only calls already made, but the estimated value of those to be made, may be so proved (*t*). The expression "deemed to be" leaves it uncertain whether the trustee ought to be settled on the list of contributories or not; but it is clear that he cannot be made a contributory in any other than his representative character, unless he does something to render himself a shareholder (*u*). The payment of calls to preserve the shares from forfeiture, and the receipt of dividends paid in respect of the shares, does

(*o*) *Buchan's case*, 4 App. Ca. 549, at p. 589.

(*p*) Comp. Act, 1862, §§ 75 and 77. See *Ex parte Marshall*, 7 Ch. 324; *Ex parte Budden & Roberts*, 12 Ch. D. 288; *Mercantile Mutual Marine Ins. Assoc.*, 25 Ch. D. 415. A bankrupt contributory is a stranger to the company, *Cape Breton Co.*, 19 Ch. D. 77.

(*q*) *McEwen's case*, 6 Ch. 582.

(*r*) See *Hastie's case*, 4 Ch. 274, and 7 Eq. 3; *Martin's Patent Anchor Co.* v. *Morton*, L. R. 3 Q. B. 306; *Financial Corporation* v. *Lawrence*, L. R. 4 C. P. 731; *Ex parte Malone*, Ir. Rep. 6 Eq. 272, and *ante*, p. 753.

(*s*) Comp. Act, 1862, § 77.

(*t*) Ib., § 75, and Bank. Act, 1883, § 37 *Mercantile Mutual Marine Ins. Assoc.*, 25 Ch. D. 415.

(*u*) *Stone's case*, 3 De G. & S 220.

not render a trustee in bankruptcy liable to be made a contributory personally (*x*).

Disclaimer by trustee.

If the company being wound up is insolvent and the bankrupt's shares are not fully paid up his trustee can disclaim them; and in that case the company can prove for damages against his estate (*y*).

Where a call is provable, an order under the Companies Act, 1862, for its payment ought not to be made, even although the shares may be standing in the name of the bankrupt (*z*).

B.—Contributories as past members.

General observations on past members.

Late shareholders.

The liability of shareholders, and of persons who are bound to take shares, at the time of the commencement of the winding up having been now examined, it is necessary to advert to the position of persons who would have been contributories if they had not ceased to hold their shares before the time in question.

The liability of a retired member of a company to be placed on its list of contributories depends primarily on the effect of the retirement as between himself and the other members, and secondarily on its effect as between himself and the creditors of the company.

The extent to which a member of a company who leaves it gets rid, as between himself and the other members, of his obligations to contribute with them to the discharge of the debts and liabilities of the company depends theoretically on the constitution of each particular company. Practically, however, it will be found that, as a general rule (*a*), a member

(*x*) See, as to paying calls, *Stone's case*, 3 De G. & S. 220, and as to receiving dividends, *Armstrong's case*, 1 De G. & S. 565. See, too, *South Staffordshire Rail. Co.* v. *Burnside*, 5 Ex. 129. See the analogous case of executors, *ante*, note (*n*).

(*y*) Bank. Act, 1883, § 55, amended by 53 & 54 Vict. c. 71, § 13. See *ante*, pp. 750 *et seq.* See under the Act of 1869, *Ex parte Budden & Roberts*, 12 Ch. D. 288; *Hardy* v. *Fothergill*, 13 App. Ca. 351.

(*z*) *Mitchell's case*, 5 Ch. 400.

(*a*) There are exceptions, as in *Helby's case*, 2 Eq. 167, and others of

of a company, whose shares have been duly transferred, surrendered, or forfeited, is discharged, as between himself and the other members, from all liability as well in respect of past as of future transactions: the acceptance by the company of the transfer or surrender, or the declaration by the company of the forfeiture, being, generally speaking, equivalent to a release by the company of the member whose shares are thus dealt with, from all liability in respect of them. Where this is the case, he is not liable, on the subsequent winding up of the company, to be put on the list of contributories with the present members; and his liability to be put on the list at all can only arise from some necessity of having recourse to past members in order to pay the debts of the company or to adjust the rights of such members *inter se*.

Under the Acts of 1848 and 1849.

Under the Winding-up Acts of 1848 and 1849, the liability of a late shareholder to be made a contributory depended upon the simple question whether he had, as between himself and the company, got rid of the obligations which, by supposition, he was once under. If he had, he was not a contributory with the existing members, whatever his liability to creditors might have been; whilst if he had not, he was a contributory, although he might have been under no liability to the creditors at law (*b*). But there might be, and, in fact, there usually were, a considerable number of retired members who, although not liable to contribute with the existing shareholders, were, as between themselves, liable to contribute to the payment of those debts which were enforceable against them at law, and which the existing shareholders were unable to discharge. The question then arose whether these transferors ought not to be contributories, seeing that they might be ultimately called upon to defray debts of the company, although they were entitled to be indemnified against such debts by the existing shareholders. This

that class, noticed *infra*. By the Stannaries Act, 1887, 50 & 51 Vict. c. 43, § 22, the relinquishment of a share in a mine subject to that Act has no effect if the company goes into liquidation within six weeks.

(*b*) See *Ex parte Gouthwaite*, 3 Mac. & G. 187; *Stirling's case*, 6 Ir. Ch. 180, and the cases in the next two notes.

question was formerly answered in the affirmative (*c*); but the later practice was not to make such persons contributories until it actually became necessary to do so, in order to prevent one or more of them from bearing more than his or their share of loss. In other words, retired shareholders were not placed on the list of contributories simply because they might possibly be called upon to make good losses which, as between themselves and the existing shareholders, ought to be borne by the latter (*d*). Before the retired shareholders could be made contributories, it had to be shown that there was some necessity for putting them on the list for the purpose of equitably adjusting these claims against each other (*e*).

Under the Companies Act, 1862.

This practice is also followed in winding up companies under the Companies Act, 1862 (*f*): and a person improperly put on the list as a present member will be struck off the list altogether, although he may possibly be put on again as a past member. Nor is it necessary when striking him off the list (*i.e.*, the list of present members), expressly to reserve, or to add without prejudice to, his liability to be put on the list as a past member. The removal from the list of a person sought to be put on as a present member is understood in practice to leave open for future decision the question whether he ought to be on the list as a past member (*g*).

In winding up companies under the Companies Act, 1862, and in considering the liability of a person who was a

(*c*) *Ex parte Morgan*, 1 Mac. & G. 225; *Hawthorn's case*, 1 De G. & S. 571, and on appeal, 1 Mac. & G. 49. The transfer took place within, and not (as stated in the marginal note in 1 De G. & S. 571) more than three years before the winding up of the company.

(*d*) *Carew's case*, 7 De G. M. & G. 43; *Sutton's case*, 3 De G. & S. 262; *Holme's case*, 4 ib. 312, and 2 De G. M. & G. 113; *Ex parte Stirling*, 6 Ir. Ch. Rep. 180.

(*e*) Compare the cases in the last two notes, and observe that in *Hawthorn's case*, the transferor was made a contributory at the instance of a person in the same position as himself.

(*f*) See § 170, now repealed by 44 & 45 Vict. c. 59. See, as to *Part's case*, 10 Eq. 622, *infra*, note (*h*).

(*g*) See *Wright's case*, 12 Eq. 331. See pp. 345-6, *per* L. J. Selwyn. Where, however, the register of members, as distinguished from the list of contributories, is rectified, it may be necessary to add, without prejudice, &c., see *Marshall* v. *Glamorgan Iron, &c., Co.*, 7 Eq. 129.

shareholder before, but not at the time of the commencement of the winding up, to be put on the list of contributories, it is necessary to distinguish,—

1. Unregistered companies;
2. Companies registered but not formed under the Act;
3. Companies formed as well as registered under the Act.

1. Unregistered companies.

1. The liability of a past member of an unregistered company depends on § 200, which contains no statutory limit as to the time after which a past member ceases to be liable. His position, therefore, depends on his liability to existing creditors, and on the constitution of the company of which he was a member. It very rarely, however, happens that a past member can be put on the list by reason of any rights which the present members have as against him: and speaking generally no past member of an unregistered company is liable to be on the list at all, unless there are debts to which he was liable before he retired, and unless the present members are unable to pay such debts (*h*).

Cost-book mines.

With respect to cost-book mining companies the Stannaries Act, 1869, renders past members not liable to be put on the list if they have ceased to be shareholders for two years or upwards before the mine has ceased to be worked, or before the date of the winding-up order (*i*).

Benefit building societies.

The liability of members of a building society who have withdrawn before the commencement of the winding up will be noticed hereafter (*k*).

2. Companies registered under the Act of 1862, but not formed under it.

2. The liability of a past member of a company registered, but not formed under the Companies Act, 1862, depends on § 196, which renders § 38 applicable to the company from the time of its registration (*l*). But this is subject to the important qualification that the liabilities of members at the time of registration to their existing creditors are preserved (see §§ 195, 196, cl. 5, and § 197). Consequently, in dealing

(*h*) See *Part's case*, 10 Eq. 622. If, in this case, there were present members capable of paying the debts in respect of which Part was held liable, the decision was not conformable with the usual practice.

(*i*) 32 & 33 Vict. c. 19, § 25. See *Chynoweth's case*, 15 Ch. D. 13, and see *ante*, p. 1114, note (*a*).

(*k*) See Appendix No. III.

(*l*) *Ramsay's case*, 3 Ch. D. 388.

with companies of this description, it is necessary to subdivide the past members into three classes, viz. :—

(*a*.) Those who ceased to be members before registration.

(*b*.) Those who ceased to be members afterwards, but more than a year before the commencement of the winding up.

(*c*.) Those who ceased to be members after registration, and less than a year before such commencement.

Class (*a*).

(*a*). As regards the first of these classes it seems that they are not liable to be put on the list of contributories of the registered company, never having been members of it (*m*). But if this technical difficulty is got rid of, by an order winding up the unregistered company, as well as the registered company, the liability of the past members now under consideration will be the same as that of past members in unregistered companies.

Class (*b*).

(*b*.) As regards the second of the above classes, § 38 frees them from all liability in respect of debts contracted by the company after its registration; but §§ 195 to 197 leave those persons who were members before registration exposed to liability in respect of such debts as existed at the time of registration, and at the commencement of the winding up, and as the present members are unable to pay. In respect, therefore, of such debts, if any, such past members of this class may be liable to be put on the list.

Class (*c*).

(*c*.) The third of the above classes may include persons who became members before the registration of the company, as well as those who became members since. The position of those who became members since the registration of the company depends entirely on § 38, and is the same as that of past members in companies formed and registered under the Act (see § 196) (*n*). The position of those who became members before the registration of the company is more complicated: for first they are by § 38, under the same liability as those last spoken of; and, secondly, they are by §§ 195, 196, and 197, liable to be made contributories in

(*m*) See *Lanyon* v. *Smith*, 3 B. & Sm. 938; and *Kelk's case*, 9 Eq. 107.

(*n*) *Ramsay's case*, 3 Ch. D. 388.

respect of debts existing before registration, and still unpaid; and whilst their liability under § 38 may be limited, their liability under § 196 may be unlimited.

3. Companies formed and registered under the Act.

3. The position of retired members of companies formed and registered under the Companies Act, 1862, is defined by § 38. Persons who have ceased to be members twelve months before the commencement of the winding up are not liable to be put on the list at all (*o*); whilst persons who have ceased to be members less than twelve months before that time are liable to be put on the list, but only as past members; and no person is under any liability as a past member unless two things can be proved, viz.:—

1. It must be shown that there is some undischarged debt or liability of the company contracted before the person in question retired (*p*).

2. The Court must be satisfied that the existing members are unable to satisfy their contributions (*q*).

Contributories as past members.

Hence, as under the older winding-up Acts, it is not the practice to put any person on the list of contributories as a past member until the inability of the present members to discharge their liabilities is apparent (*r*). But it is not necessary to obtain from them all that they can pay before settling a past member on the list (*s*).

It is now settled that the liability of past members is only to pay those debts contracted before they ceased to be members, which the present shareholders are unable to pay. The past members get the benefit of all dividends paid by calls on present members; and their liability is confined to calls in respect of what remains of the debts in question. It follows from this that if these debts are paid or released, no calls can be made on past members, and they ought not to be put on the list of contributories (*t*).

(*o*) See *Gooch's case*, W. N. 1872, p. 227.

(*p*) *Weston's case*, 6 Eq. 17; *Brett's case*, 6 Ch. 800, and 8 Ch. 800; *Webb* v. *Whiffin*, L. R. 5 H. L. 711.

(*q*) See § 38, cl. 2 and 3.

(*r*) See *Needham's case*, 4 Eq. 135, and *ante*, p. 1040.

(*s*) *Andrew's case*, 3 Ch. 161. See *Helbert* v. *Banner*, L. R. 5 H. L. 28, which shows that the Court will act on the liquidator's estimates, unless they can be shown to be wrong.

(*t*) See *Brett's case*, 8 Ch. 800, a rehearing of S. C., 6 Ch. 800.

Settling a person on the list of contributories as a past member does not of itself decide or prejudice any question as to his liability to any particular call (*u*).

Past members not sureties.

Past members are not sureties; and a compromise by the liquidator with present members, even when made without notice to a past member, does not discharge him from his liability to be a contributory, at least if such liability is reserved, as in practice it always is (*v*). The right, however, of a past member to be indemnified by his own transferee is not affected by a compromise between the transferor and the liquidator (*x*).

Having made these preliminary remarks on the liability of persons who have retired from a company before the commencement of its winding up, to be put on the list of contributories as past members, it is proposed to examine the position of such persons more in detail, and to point out when they are liable to be put on the list as present members, and when as past members only.

Irregular retirement.

It has already been seen that, where a person has, in fact, become a shareholder, he is a contributory, although all prescribed formalities may not have been observed (*y*). On similar principles, where a person has, in fact, retired from a company, he will not be a contributory (at least as a present member), although his retirement may have been somewhat irregular in point of form (*z*). But this proposition assumes that the shareholder had the right to retire; and that his retirement would have been unimpeachable if all proper formalities had been duly observed. Where this is not the case, the retired member will, in point of law, be a shareholder still; and will be liable to be made a contributory accordingly, as a present member, subject only to the question whether there is any

(*u*) See *Andrew's case*, 3 Ch. 161.

(*v*) *Hudson's case*, 12 Eq. 1; *Nevill's case*, 6 Ch. 43; *Helbert* v. *Banner*, L. R. 5 H. L. 28.

(*x*) *Roberts* v. *Crowe*, L. R. 7 C. P. 629. See, also, *Kellock* v. *Enthoven*, L. R. 8 Q. B. 458, and 9 ib. 241; *Heritage* v. *Paine*, 2 Ch. D. 594.

(*y*) *Ante*, under A. 2, p. 1047 *et seq.*

(*z*) See *Taurine Co.*, 25 Ch. D. 118; *Bush's case*, 6 Ch. 246, affirmed *Murray* v. *Bush*, L. R. 6 H. L. 37. Upon the application to such cases of the maxim, *omnia præsumuntur rite esse acta*, the following cases are particularly instructive: *Lane's case*, 1 De G. J. & Sm. 504; *Knight's case*, 2 Ch. 321; *Woollaston's case*, 4 De G. & J. 437.

Effect of lapse of time.

statutory or other limit of time, after the lapse of which the retirement cannot be called in question. Statutory limit there appears to be none, unless it be twenty years (*a*); but there is the highest authority for the proposition that where a person has retired *bonâ fide* and openly, so that all the shareholders ought to be treated as aware of the fact, the equitable doctrines of laches and acquiescence ought to be applied against a company, and preclude it from disputing the validity of the retirement (*b*).

Bearing these observations in mind, it is proposed to consider the liability, to be put on the list of contributories, of—

1. Persons who have transferred their shares to others.
2. Persons who have surrendered their shares to the company.
3. Persons whose shares have been forfeited.

1. *As regards persons who have transferred their shares to others.*

In considering the position of a person who has parted with his shares to another, two classes of cases must be distinguished from each other: viz., 1, cases in which the transferee has actually been substituted by the company for the transferor before the commencement of the winding up; and 2, cases in which there has been no such substitution.

a) Where the transferee has been accepted by the company in the place of the transferor.

Transferors of shares when not contributories.

If a person has transferred his shares to another, if the transferee has accepted the transfer, and if he has been accepted by the company as a shareholder in respect of those shares, then, on the subsequent winding up of the company,

(*a*) See § 16 of the Companies Act, 1862; *Helby's case*, *Stoke's case*, and *Horsey's case*, all in 2 Eq. 167.

(*b*) *Murray* v. *Bush*, L. R. 6 H. L. 37; *Evans* v. *Smallcombe*, L. R. 3 H. L. 249, affirming *Smallcombe's case*, 3 Eq. 769; *Brotherhood's case*, 31 Beav. 365, and 4 De G. F. & J. 566. See *ante*, pp. 712–716. See, also, *Hunt's case*, 32 Beav. 387.

the transferee, and not the transferor, is the person to be made a contributory as a present member in respect of the shares transferred.

Cape's Executors' case.

A leading case on this head is *Cape's Executors' case* (*c*), in which it was held that the purchaser of shares in a banking company governed by 7 Geo. 4, c. 46, was liable as a contributory, as well in respect of debts contracted *before* as in respect of those contracted *after* he became a shareholder. It was considered that, in the absence of any special provisions in the company's deed to the contrary, the purchaser took the shares as they stood, subject to the state of the concern at the date of his purchase. This may safely be taken to be the general rule; and it follows from it that, as between the company, the buyer, and the seller, the seller, when he transfers his shares, transfers his liability to be made a contributory.

Harrison's case.

The proposition that in such cases the transferor is not a contributory, is established indirectly by the cases just cited, and more directly by others; *e.g.*, *Harrison's case* (*d*), where the directors assented to a transfer on the terms that the transferor should guarantee payment of future calls by the transferee; and it was held that the transferor was not a contributory, although the transferee was insolvent.

Even where the transfer is in some respects irregular, still if it is *intra vires*, and the transferee has accepted the transfer, and has been accepted by the company, the transferee (*e*), and not the transferor (*f*), will be the contributory as a present

(*c*) 2 De G. M. & G. 562, affirming the decision of the Master of the Rolls, 16 Jur. 787. See, too, *Holme's case*, 2 De G. M. & G. 113; *Mayhew's case*, 5 ib. 837, a case of a cost-book mine.

(*d*) 6 Ch. 286. For other illustrations of the same principle, see *Croxton's case*, 1 De G. M. & G. 600; *Nicol's case*, 3 De G. & J. 387; *Orpen's case*, 9 Jur. N. S. 615.

(*e*) *Meux's Executors' case*, 2 De G. M. & G. 522; *Straffon's Executors' case*, 1 De G. M. & G. 576; *Sanderson's case*, 3 De G. & S. 66, and 3 H. L. C. 698; *Gordon's case*, 3 De G. & S. 249; *Walters' case*, 3 De G. & S. 149. Compare the cases cited *infra*, pp. 1128 *et seq.*, where the transferee had not been accepted by the company in the place of the transferor.

(*f*) *Murray* v. *Bush*, L. R. 6 H. L. 37, affirming *Bush's case*, 6 Ch. 246, where the transferor was an outgoing director; *Ex parte Littledale*, 9 Ch. 257, where the transferor had not

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member. The same rule holds good in the case of a *bonâ fide* transfer without value (*g*). But a transfer which is wholly invalid cannot be treated as good, simply by being acted upon (*h*). Even in this case, however, the transferee and not the transferor will be a contributory, if there was in effect an agreement between them both and the company, that the transferee should take the shares instead of the transferor (*i*).

Transfer made to avoid liability.

Moreover, the fact that the transfer has been made to a man of straw simply to avoid liability makes no difference (*k*).

In *Hyam's case* (*l*), Lord Campbell threw some doubt upon this doctrine; but, notwithstanding his Lordship's remarks, it seems to be settled that, where the transfer is a real transaction, it will stand, although the transferor's sole object in making it may be to get rid of liability (*m*); except, perhaps, in the case of a director transferring his qualification shares (*n*).

Stannaries Act, 1869.

By the Stannaries Act, 1869, 32 & 33 Vict. c. 19, § 35, a transfer of shares made for the purpose of getting rid of liability for a nominal consideration, or to a person who is insolvent, or in the domestic service of the transferor, is presumed to be fraudulent and need not be recognised either by the Court or the company. Still, if the company, knowing the facts, has recognised the transfer, it cannot afterwards set it aside (*o*).

paid his calls; *Rivington's case*, 3 Ch. D. 10; *Doman's case*, ib. 21, where the transfer had not been enrolled as required by Act of Parliament. See, also, the cases in the last note.

(*g*) *Maguire's case*, 3 De G. & S. 31; *Fenwick's case*, 1 De G. & S. 557.

(*h*) See *Chappell's case*, 6 Ch. 902; and the cases of scrip, *McEuen* v. *West London Wharves Co.*, 6 Ch. 655; *East Gloucester Rail. Co.* v. *Bartholomew*, L. R. 3 Ex. 15, which, although not contributory cases, are applicable to them. Compare *Taurine Co.*, 25 Ch. D. 118.

(*i*) See *Morton's case*, 16 Eq. 104.

(*k*) *De Pass's case*, 4 De G. & J. 544, and cases below. See, too, *Cawley & Co.*, 42 Ch. D. 209.

(*l*) 1 De G. F. & J. 75.

(*m*) *Taurine Co.*, 25 Ch. D. 118; *Master's case*, 7 Ch. 292; *Hakim's case*, ib. 296, note; *Bishop's case*, ib.; *Harrison's case*, 6 Ch. 286; *Weston's case*, 4 Ch. 20; *Slater's case*, 35 Beav. 391; *Costello's case*, 2 De G. F. & J. 302; *Garstin's case*, 10 W. R. 457; *Hatton's case*, 8 Jur. N. S. 380.

(*n*) *South London Fish Market Co.*, 39 Ch. D. 324, at p. 331, and *Gilbert's case*, 5 Ch. 559; but see *Cawley & Co.*, 42 Ch. D. 209, as to a director's right of transfer in general.

(*o*) *Chynoweth's case*, 15 Ch. D. 13.

Malâ fide transfers.

But, independently of any statutory enactment, such transfers are naturally viewed with great suspicion, and if there is any doubt as to whether the transferor has *bonâ fide* parted with all his interest in the shares, or if the directors having power to reject the transferee have been imposed upon in accepting him, the transfers will be treated as invalid. The following are the leading cases on this head:—

i.) *Where there is no real transfer.*

1. No real transfer. Lund's case.

In *Lund's case* (*p*) a holder of 100 shares, of 10*l.* each, in an insolvent company, sold them all to one of his servants for half-a-crown. The shares passed by delivery, and it was not necessary that the purchaser should be accepted as a shareholder by the company. The sale was held to have been made *malâ fide*, and the seller was held to be a contributory.

Hyam's case.

Hyam's case (*q*) was a similar case, the transferor in effect giving the transferee the money expressed to be paid for the shares. The Court treated the whole transaction as a mere fable which the parties were acting, and held upon the evidence that they never intended the transfer to have any effect as between themselves. In this case also the shares passed by delivery.

Chinnock's case.

In *Chinnock's case* (*r*), there was a formal transfer, and the company's deed contained a clause that trusts should not be recognised; but the transferor was nevertheless put on the list, as it was clear that the transferee had no real interest in the shares, and the trust was merely created to screen the transferor from liability.

Costello's case.

In *Costello's case* (*s*), a son transferred his shares to his father, who was old and was supported by his family. The sale was expressed to be made for a trifling consideration, after the company had been ordered to be wound up, and was clearly not a *bonâ fide* transaction, but a mere device to substitute the father for the son. The son was put on the list.

Alexander's case.

Alexander's case (*t*). There a shareholder, who was a broker, transferred his shares to a clerk for an alleged consideration of 97*l.* 10*s.*, which was never paid. The transfer was registered, but the transferor kept the certificates, and his clerk sent all notices to him. The clerk was settled on the list, and was ultimately attached and imprisoned for not paying the calls made upon him. He then took the benefit of the Insolvent Act. The transferor was afterwards examined, and the result was that the transfer was held invalid, and he was put on the list in the place of the clerk. This case is the more instructive as it is plain that the clerk was himself estopped from denying that he was a shareholder.

(*p*) 27 Beav. 465.

(*q*) 1 De G. F. & J. 75.

(*r*) Johns. 714. See, also, *Scully's case*, 6 Ir. Ch. 72.

(*s*) 2 De G. F. & J. 302.

(*t*) 9 W. R. 410. See *ante*, p. 1036.

Budd's case.

Budd's case (*u*). There a solicitor transferred shares to his servant without consideration, and solely for the purpose of escaping from liability. The solicitor was held to be a contributory. It was considered that the servant might have repudiated the transaction, and that the company was entitled to show that the transfer was invalid, although the transferee did not himself impeach it.

Hatton's case.

Hatton's case (*x*). There the transfer was made after notice of a call, and in order to avoid payment of it. The directors had refused to register the transfer. The transaction was plainly a mere device to avoid liability.

De Pass's case.

De Pass's case (*y*) was the first case of this class in which the transferor was held not a contributory. There a shareholder knowing that the company was in difficulties transferred his shares to a clerk for a nominal consideration. The shares were transferable by delivery, and the Court of Appeal came to the conclusion that the transfer was a real transfer out and out. This case is extremely difficult to reconcile with the others noticed above, and is generally admitted to be unsatisfactory (*z*).

Whether *De Pass's case* was rightly decided or not, both that and the other decisions above referred to establish, that notwithstanding a transfer in form, the transferor will be held a contributory if the evidence shows not only that the transfer was made to get rid of liability, but that the transfer was not a real transaction, and was not intended to divest the interest of the transferor, and to render the transferee the *bonâ fide* owner of the shares, but that the transferee held them subject to the orders of the transferor: and although it cannot, perhaps, be denied that, in the cases in question, the relation of trustee and *cestui que trust* was created, it is obvious that the sole object of the trust was to screen the transferor from liability. The cases show that such devices will not have the effect desired by the persons who practise them (*a*).

(*u*) 30 Beav. 143, affirmed on appeal, 3 De G. F. & J. 297.

(*x*) 8 Jur. N. S. 380. Compare *Orpen's case*, 9 ib. 615.

(*y*) 4 De G. & J. 544. For other cases to the same effect, see *ante*, p. 1122, note (*g*).

(*z*) The Master of the Rolls put De Pass on the list. The Lords Justices reversed the decision. An appeal to the House of Lords was prevented by a compromise.

(*a*) See acc. *King's case*, 6 Ch. 196, where the difference between transfers and allotments is alluded to. *Williams' case*, 1 Ch. D. 576, was a case of allotment. See *ante*, pp. 1098 *et seq.*, A. 9, trustees and cestuis que trustent.

ii.) *Where the company has been imposed upon.*

2. Company imposed upon.

The power of directors to reject a transferee depends on the company's regulations (*b*); if there is no power to reject him a misdescription is immaterial, and if he is *sui juris* and becomes a shareholder, the transferor escapes (*c*). But if the directors have power to object to a transferee, and shares are transferred to a pauper or a man of straw, who is misdescribed, so that the directors are imposed upon and induced to make no inquiry about him, the company can, on ascertaining the facts, repudiate the transfer and place the transferor on the list of contributories. This has been done where the transferee was a clerk, and was paid to accept a transfer, and he was described as a gentleman paying for the transfer (*d*). So where the transferee was a ship's steward, paying nothing for the transfer, but was described as of a certain place, where he did not live, and as paying the market price for the shares (*e*). Moreover in cases of this description, proof that the directors were not in the habit of inquiring about transferees is not material; it is their duty to inquire where their suspicions are aroused, and the mis-statements are of course made to lull suspicion (*f*).

However, the mere fact that the transferee is described as a "gentleman," when he is not entitled to be so called, is not sufficient to invalidate an otherwise valid transfer (*g*).

If the directors have accepted the transferee with knowledge of the facts, the transferor cannot be made a contributory (*h*).

Transfers to infants.

Transfers to infants are voidable not only by the infant whilst under age, or within a reasonable time after coming of age (*i*), but also by the company (*k*); unless it has accepted

(*b*) *Weston's case*, 4 Ch. 20. See *ante*, p. 645.

(*c*) Ib.

(*d*) *Payne's case*, 9 Eq. 223.

(*e*) *Ex parte Kintrea*, 5 Ch. 95. He was not described as a gentleman or anything.

(*f*) See *Williams's case*, 9 Eq. 225, note.

(*g*) *Masters's case*, 7 Ch. 292; *Bishop's case*, ib. 296, note; and, see, as to an allottee, *Williams' case*, 1 Ch. D. 576.

(*h*) *Chynoweth's case*, 15 Ch. D. 13, a case in a company governed by the Stannaries Act, 1869, as to which, see *ante*, p. 1122.

(*i*) *Ante*, pp. 55 *et seq.*, and p. 1106, A. 11 (*c*).

(*k*) *Symons' case*, 5 Ch. 298; *Castello's case*, 8 Eq. 504.

him, knowing him to be an infant (*l*), or has allowed him to transfer and has accepted his transferee (*m*). Hence, except under special circumstances, transferors to persons who are infants at the commencement of the winding up (*n*), or who, if then of age, can repudiate their shares (*o*), or can be repudiated by the company (*p*), are contributories, and not the infant transferees. Moreover, the fact that the infant transferee has got rid of some of the shares transferred to him, does not prevent the transferor from being settled on the list in respect of the rest (*q*). The only cases yet reported in which transferors to infants have escaped being put on the list are: 1, cases (*r*) where the company was precluded by its own conduct before the winding up commenced, from repudiating the transfer; and 2, cases where the infant attained 21 before the commencement of the winding up, and was precluded from repudiating the shares (*s*). A transferor to an infant more than one year before the commencement of the winding up of a company formed and registered under the Companies Act, 1862, is not liable to be put on the list either as a past or as a present member, if the shares have been since transferred by the infant to a person on the register (*t*).

Transfers to persons not consulted.

Again, if a shareholder transfers shares into the name of a person without his authority, and the transferee never accepts the shares, the transferor will be the contributory (*u*).

(*l*) *Parson's case*, 8 Eq. 656.

(*m*) As in *Gooch's case*, 8 Ch. 266, reversing S. C. 14 Eq. 454.

(*n*) As in *Hart's case*, 6 Eq. 512; *Capper's case*, 3 Ch. 458; *Curtis's case*, 6 Eq. 455; *Weston's case*, 5 Ch. 614; *Castello's case*, 8 Eq. 504; *Symons' case*, 5 Ch. 298. See, also, *Reid's case*, 24 Beav. 318; *Reaveley's case*, 1 De G. & S. 550, where the transferee was untruly stated to be of age; *Litchfield's case*, 3 ib. 141, where he was described as *Master*.

(*o*) As in *Shrapnell's case*, *ante*, p. 1107.

(*p*) This follows from *Symons' case*, 5 Ch. 298, and *Castello's case*, 8 Eq. 504, where the transferee tried to screen his transferor by keeping the shares. See, also, *Mann's case*, 3 Ch. 459, note.

(*q*) *Mann's case*, 3 Ch. 459, note; *Curtis's case*, 6 Eq. 455.

(*r*) *Parson's case*, 8 Eq. 656; *Maxwell's case*, 24 Beav. 321.

(*s*) *Ebbett's case*, 5 Ch. 302; *Mitchell's case*, 9 Eq. 363; *Lumsden's case*, 4 Ch. 31; and the next note.

(*t*) *Gooch's case*, 8 Ch. 266, reversing S. C., 14 Eq. 454.

(*u*) *Cartmell's case*, 9 Ch. 691; where the transfer was to two directors at the request of the manager, and was registered. *Heritage's case*, 9 Eq. 5; *Henessey's Executors' case*,

Mistake of company.

If the directors of a company make a mistake, and unintentionally pass a transfer, and it is registered, but the mistake is discovered and corrected before anything more is done, the transferor will be a contributory if the transferee does not object (*x*).

Other cases of invalid transfers.

Again, where a transfer is part of an illegal scheme for amalgamating the company with another (*y*), the transferor will be a contributory. So where a director transfers his shares under circumstances entitling the company to impeach the transfer, as where he postpones a call to enable him to get rid of his shares, he will be a contributory (*z*).

Transfer after company has discontinued business.

Where a company has transferred its assets to another, and has ceased to carry on business, a member of it who afterwards transfers his shares is nevertheless a contributory (*a*); for, the company having virtually ceased to exist, practically there are no shares to transfer, and a transfer of them is inconsistent with the general scheme for putting an end to the company.

Transfers to directors.

A *bonâ fide* transfer to a director as an individual, and not as a trustee for the company, has the same effect as any other transfer (*b*). So has a *bonâ fide* transfer to a director or other person who is a nominee for the company; provided the transferor acted throughout in the belief that he was dealing with an ordinary individual, and had no notice of any trust for the company (*c*). But, as will be seen in the next section, a surrender of shares to the company does not release a shareholder from liability to be made a contributory, unless the surrender is warranted by the constitution of the company.

3 De G. & Sm. 191, and 2 Mac. & G. 201; *Pim's case*, 3 De G. & Sm. 11, and 1 Mac. & G. 291, and *ante*, p. 1099.

(*x*) *Anderson's case*, 8 Eq. 509.

(*y*) As in *Clack's case*, 11 W. R. 986.

(*z*) *Gilbert's case*, 5 Ch. 559; and see *South London Fish Market Co.*, 39 Ch. D. at p. 331, and compare *Cawley & Co.*, 42 Ch. D. 209, where there was no such equity against the director.

(*a*) *Chappell's case*, 6 Ch. 902; *Lankester's case*, ib. 905, note; *Allin's case*, 16 Eq. 449. Lord Justice Mellish dissented, but see Lord Selborne's observations in 16 Eq. 455.

(*b*) *Jessopp's case*, 2 De G. & J. 638, and the cases cited in the next note.

(*c*) See *Grady's case*, 1 De G. J. & S. 488, and others of that class, noticed *infra*, p. 1139.

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Cases where the transferor remains liable to losses notwithstanding the transfer.

Holme's case.

Before leaving this branch of the subject, it is necessary to allude to those difficult and exceptional cases which occasionally arise on winding up old companies, the deeds of settlement of which contain clauses to the effect that a transfer of shares shall not release the transferor from liability in respect of antecedent losses. In *Holme's case* (*d*), where there was such a clause, and where it was proved that there were debts incurred before the shares in question had been transferred, and which debts were still unpaid, it was nevertheless held that the transferor was not a contributory; for both before and after he sold his shares, accounts not showing any losses had been laid before the shareholders, and by those accounts the company was held bound.

Helby's, Stokes', and Horsey's cases.

In *Helby's case*, *Stokes' case* and *Horsey's case* (*e*), however, which arose under the Companies Act, 1862, on winding up an old banking company, the deed of settlement of which contained a similar clause, the V.-C. Kindersley held (1), that a person who had transferred his shares more than twenty years before the commencement of the winding up ought not to be put on the list at all; but (2) that persons who had transferred their shares within that time were liable to be put on the list, but that their liability was to be confined to their proportions of the losses, if any, which had accrued whilst they held their shares. There was evidence to show the existence of such losses.

b) Where the transferee has not been accepted by the company in the place of the transferor.

In all cases of this class, something remains to be done before the transferor ceases to be a shareholder, and he therefore *primâ facie* remains a contributory. There is generally a clause to this effect in a company's articles or deed of settlement, but even where there is no such clause, the moment it is established that where shares are held in trust, the trustee and

(*d*) 2 De G. M. & G. 113, and 4 De G. & S. 312.

(*e*) 2 Eq. 167. See, also, *Sanderson's case*, 3 De G. & Sm. 66, which was afterwards observed upon in *Dodgson's case*, ib. 85, and was appealed to the Lords, 3 H. L. C. 698, when the order of the Court below was varied by consent.

not the *cestui que trust* is the contributory (*f*), it follows that a seller of shares, who, as between himself and the company, remains the holder of them when the winding up commences, must be the contributory in respect of them (*g*).

Transfers by executors.

For similar reasons the executors of a deceased shareholder remain liable to be made contributories after they have sold the shares of their testator, until the purchaser has been accepted by the company as a shareholder in respect of them (*h*).

Transfers to or by directors.

The principle of these cases is particularly applicable to transfers by or to directors; for it is more especially the duty of directors to observe all requisite formalities. If therefore they transfer their own shares informally, it is their own fault (*i*); and if shares are transferred to them informally, although it may not be the fault of the transferor, it will strongly corroborate other evidence tending to show that the transfer was not made *bonâ fide* (*k*). Such evidence may, of course, be rebutted, and then the informality will be of less consequence (*l*).

The general rule, illustrated by the foregoing decisions, is as applicable at the present day as formerly (*m*), subject to the qualification introduced by the Companies Act, 1862, and which it is proposed now to examine.

Companies Act, 1862, § 153.

By § 153 of the Companies Act, 1862, it is enacted, that where a company is being wound up by the Court, or subject to its supervision, every transfer of shares or alteration of the status of the members of the company made between the commencement of the winding up (*n*) and the order for winding up shall be void, unless the Court otherwise orders; and by § 131,

(*f*) *Ante*, p. 1098.

(*g*) *Humby's case*, 5 Jur. N. S. 215; *Chartres' case*, 1 De G. & S. 581; *De Castro's case*, 2 Jur. N. S. 1203; *Ex parte Walton & Hue*, 3 ib. 853. Compare *Mayhew's case*, 5 De G. M. 837. See, also, the Irish cases of *Ex parte Scully*, 6 Ir. Ch. Rep. 72, and *Ex parte Kennedy*, ib. 121.

(*h*) *Keene's Executors' case*, 3 De G. M. & G. 272.

(*i*) *Ex parte Brown*, 19 Beav. 97. See, too, *Eyre's case*, 31 Beav. 177.

(*k*) *Ex parte Henderson*, 19 Beav. 107.

(*l*) *Murray* v. *Bush*, L. R. 6 H. L. 37, affirming *Bush's case*, 6 Ch. 246; *Ex parte Bagge*, 13 Beav. 162.

(*m*) See *infra*, pp. 1131 *et seq.*

(*n*) As to date at which a winding up commences, see *ante*, p. 897, and *Taurine Co.*, 25 Ch. D. 118.

it is enacted, that where a company is being wound up voluntarily, all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company, taking place after the commencement of the winding up, shall be void. Transfers made after a winding-up order are *à fortiori* void if not sanctioned by the Court or the liquidators (*o*). The effect of these enactments appears to be that after the commencement of the winding up of a company its register of members cannot be lawfully altered, except by the order of the Court (*p*), or, perhaps, in a case of voluntary winding up, by the sanction of the liquidators (*q*). But the Act does not invalidate contracts for the sale of shares or transfers of them as between the parties: it only avoids the transfers so far as regards any effect to be given to them by or against the company, unless sanctioned by the Court or the liquidator, as the case may be (*r*). The Act, it will be observed, applies not only to cases where shares have been transferred after the commencement of the winding up, but also to cases where they have been transferred previously, but the transfers have not been registered. The words "alteration of the status of the members" plainly include the last-mentioned cases. But it is by no means clear from the language of the Act, whether the Court can, under § 153, alter the register in cases to which § 35 does not apply; or whether § 35 restricts the general power to sanction transfers which is conferred on the Court by § 153. The tendency of the more modern decisions is in favour of the latter view (*s*).

Altering register of members.

(*o*) See §§ 38 and 74, and *Onward Building Society* [1891], 2 Q. B. 463, and compare 11 & 12 Vict. c. 45, § 76; *Glanville's case*, 10 Eq. 479.

(*p*) *Onward Building Society* [1891], 2 Q. B. 463. A consent order removing a person's name from the register is not invalidated by the fact, that on the same day a petition to wind up is presented on which a winding-up order is afterwards made. *London Suburban Bank*, 15 Eq. 274. Compare *Barge's case*, 5 Eq. 420.

(*q*) *Taylor, Phillips, and Rickards' cases* [1897], 1 Ch. 298, and *ante*, p. 1037.

(*r*) *Rudge* v. *Bowman*, L. R. 3 Q. B. 689; *Onward Building Society* [1891], 2 Q. B. 463; *Taylor, &c., cases* [1897], 1 Ch. 298; *Chapman* v. *Shepherd and Whitehead* v. *Izod*, L. R. 2 C. P. 228.

(*s*) See, as to the construction of § 35, *ante*, pp. 165 *et seq.*

Again, whether the Court can exercise the discretion, which is generally reposed in the directors, of permitting or refusing transfers is another very important matter on which there is also a conflict of judicial opinion. This question, it will be observed, does not depend on the power of the Court to rectify the register, but on its power to substitute its own judgment for that of the persons in whom the discretion of accepting or rejecting transferees has been reposed by the members of the company. The better opinion is that this cannot be done (*t*); although the absence of approval is not material where there were no grounds for disapproval, and where the approval was not a condition precedent to the transferee's becoming a shareholder (*u*).

The following observations, it is hoped, will be found to be in accordance with the most recent decisions (*x*) :—

i.) *Where the sale has taken place before the commencement of the winding up.*

Delay on the part of the parties to the transfer.

1. If a person has sold his shares, and has unnecessarily delayed compelling the purchaser to complete the transfer, and the seller remains the registered holder at the commencement of the winding up, he, and not the purchaser, will be placed on the list (*y*); although, as between the seller and the purchaser, the former may be entitled to an indemnity from the latter (*z*), and although each of them may be as solvent as the other (*a*).

No delay, and transfer complete although not registered.

2. Where before the commencement of the winding up shares are *bonâ fide* sold, and the transfer has been executed by both transferor and transferee, and has been left for registration at the company's office, and there has been no

(*t*) *Infra*, pp. 1132 *et seq.* See, also, *Shepherd's case*, 2 Ch. 16.

(*u*) *Ward and Garfit's case*, 4 Eq. 189, and *infra*, p. 1132.

(*x*) See the summary of V.-C. Giffard in *Marshall* v. *Glamorgan Iron and Coal Co.*, 7 Eq. at p. 137.

(*y*) *Ward and Henry's case*, 2 Ch. 431, reversing *Ward's case*, 2 Eq. 226; *Walker's case*, 6 Eq. 30; *Head's case*, 3 Eq. 84; *White's case*, ib. The observations of the Master of the Rolls in *Ward's case*, 2 Eq. 226, were commented upon and explained by him in these two last cases.

(*z*) *Head's case* and *White's case*, 3 Eq. 84.

(*a*) Ibid. In *Head's case*, the liquidator was indifferent as to which of the two was put on the list.

unnecessary delay on either side in completing the transfer, and nothing remains to be done except to register it, and the company, having had an opportunity of registering, have neglected, but not declined to do so (*b*); under these circumstances, the Court will allow, and indeed order, the transferee's name to be substituted for that of the transferor, unless there is some good reason why the transfer should not be completed (*c*). Even if the transferee has not executed the transfer, still if he has accepted the shares, and has been accepted by the directors as a shareholder, the transferee will be treated as the owner (*d*).

Discretion of directors exercised by the Court.

3. Where, as is generally the case, the directors have power to decline to register a transfer if the transferee is not approved by them, and a transfer has been left for registration in sufficient time to be approved before the commencement of the winding up, but has not been approved; still, if no delay is imputable to the parties to the transfer, and there are no grounds on which the directors could have properly declined to accept the transferee, the Court will accept him, and order his name to be registered (*e*). But if the directors did object on proper grounds, the Court clearly cannot interfere; and it has been held competent for directors, seeing that the company is *in extremis*, to resolve that no more transfers shall be registered without their express sanction; and where this is done, the Court will decline to complete a transfer left for registration just before the passing of the resolution (*f*), although the Court will complete a transfer which was left for

(*b*) See *infra*, 3, 4, and 6, as to this. And compare *Lord R. Montagu's case*, W. N. 1888, 136, where the transferor had neglected to see that the transfer was registered, and there was no default on the part of the company.

(*c*) *Fyfe's case*, 4 Ch. 768; *Hill's case*, ib. 769, note; *Lowe's case*, 9 Eq. 589; *Ward and Garfit's case*, 4 Eq. 189; *Nation's case*, 3 Eq. 77; and see *Ward's case*, 2 Eq. 226.

(*d*) *General Floating Dock Co.*, W. N. 1867, 27, where the transferee was registered.

(*e*) *Weston's case*, 4 Ch. 20, where the transferee was a man of straw, but the directors had no right to object to him. See, also, *Ward and Garfit's case*, 4 Eq. 189; *Nation's case*, 3 Eq. 77; and compare *Weston's case*, with *Ex parte Parker*, 2 Ch. 685.

(*f*) *Alexander Mitchell's case*, 4 App. Ca. 548 & 567; *Rutherfurd's case*, ib. 548 & 581; *Mitchell* v. *City of Glasgow Bank*, ib. 624; *Shepherd's case*, 2 Ch. 16, and 2 Eq. 564.

registration, and ought to have been registered before the resolution was passed (*g*).

Delay in registering transfer.

4. It is always material, in these cases, to ascertain whether the directors have received a proper transfer in sufficient time before the commencement of the winding up to enable them to pass or reject the transfer in the ordinary course of business; they are entitled to a reasonable time to consider transfers before registering them (*h*). Where there has been no board meeting in the interval between the leaving of the transfer and the commencement of the winding up, the Court has never yet completed the transfer, and it is very doubtful whether the Court has any power to do so (*i*). But where there has been such a meeting, although only one, delay is imputable to the company in not passing and registering the transfer, and the Court can and will order it to be completed if the parties to the transfer have not themselves been guilty of delay (*k*).

Improper transfers.

5. But this assumes that the transfer left for registration is one which the directors were bound to accept: if it be not, no delay is imputable to the company, and the transferor will be the contributory.

This has been decided where no transfer has been left for registration (*l*); where the transfer left was not executed by the transferee, as was required by the practice of the company (*m*); where the transferee was a person to whom the company might have objected (*n*); where the transferor not having paid his calls was not entitled to transfer (*o*). But a transfer executed in blank and filled up afterwards, but before being sent in for registration, has been held sufficient (*p*).

(*g*) *Nation's case*, 3 Eq. 77; and see *Lowe's case*, 9 Eq. 589.

(*h*) *Ottos Kopje Diamond Mines, Ld.* [1893], 1 Ch. 618.

(*i*) See *Ward and Henry's case*, 2 Ch. 431; *Shepherd's case*, ib. 16.

(*k*) See *Nation's case*, 3 Eq. 77; *Hill's case*, 4 Ch. 769, note; *Lowe's case*, 9 Eq. 589, where petitions for winding up, which were afterwards withdrawn, were pending. *Qu.* this case.

(*l*) *Musgrave and Hart's case*, 5 Eq. 193.

(*m*) *Marino's case*, 2 Ch. 596; *Walker's case*, 2 Eq. 554, and see last note.

(*n*) *Shipman's case*, 5 Eq. 219.

(*o*) *Holden's case*, 8 Eq. 444.

(*p*) *Contract Corporation*, 3 Ch. 105.

The directors of a mutual insurance society are entitled to evidence of the assignment of a policy, and if reasonable time for inquiry has not elapsed before the winding up, the Court will not register the transferee (*q*).

6. It must be borne in mind in these cases that if the company has refused to register the transferee before the company was in difficulties, the company cannot insist on having his name put on the list of contributories instead of that of the transferor (*r*); and the creditors of the company are in this respect in no better position than the company (*s*).

ii.) *Where the sale has taken place since the commencement of the winding up.*

If, in order to rectify a company's register and to substitute the name of a transferee for that of the transferor, it is essential that the transfer shall be left for registration before the functions of the directors cease, it will follow that a person who sells his shares after that time must, under all circumstances, be a contributory. But if this is not essential, there will be the same power of making the substitution where sales are made after, as where they are made before, a petition to wind up (*t*). It is obvious, however, that to allow shareholders to get rid of their liabilities by selling their shares after the commencement of the winding up of the company would lead to the greatest fraud; and it is difficult to conceive any circumstances which can entitle such a seller to have the purchaser substituted for him, if the liquidators or the creditors oppose the substitution (*u*). The only reported cases in which the substitution has been made, even where there has been no opposition on their part, are *Taylor*, *Phillips*, and *Rickards' cases* (*x*), where the liquidator in a voluntary winding up had given his sanction to the transfer in question. In *Emmerson's case* (*y*), indeed, the Master of the Rolls made

Emmerson's case.

(*q*) See *Sanders' case*, 20 Ch. D. 403.

(*r*) *Sichell's case*, 3 Ch. 119.

(*s*) Ib.

(*t*) See acc. *Emmerson's case*, 1 Ch. 433.

(*u*) Under the Acts of 1848 and 1849 the transferor has been decided to be the contributory. *Glanville's case*, 10 Eq. 479.

(*x*) [1897], 1 Ch. 298.

(*y*) 2 Eq. 231.

the substitution; but the decision was reversed on appeal (*z*). This case, moreover, was decided before it was held, as it now is, that the question who ought to be on the list of contributories, is materially different from the question whether the seller is entitled to indemnity from the purchaser. In *Walker's case* (*a*), the Court declined to make the substitution, on the ground that the Court could not itself exercise the discretion of approving or rejecting transferees, which was vested by the company's articles of association in the directors. In each of the above cases the liquidator was indifferent as to which person was on the list. In the case of the *Onward Building Society* (*b*), the Court declined to make the substitution, though the company was solvent. The liquidator opposed on the ground that the society would be put to trouble and cost in registering the transfers.

Walker's case.

Onward Building Society.

In connection with this subject it is to be remembered that sales of shares after the commencement of a winding up are not void under § 153 of the Companies Act, 1862; and transfers after that date may be approved by the Court, or in a voluntary winding up by the liquidators (*c*); but the Court will not approve without good reason (*d*). If such approval is given, the transferee is the proper person to be placed on the list (*e*).

2. *As regards persons who have surrendered their shares to the company.*

Surrenderors of shares.

The right of shareholders to retire from a company has been discussed in an earlier chapter (*f*), and it was there seen that in the absence of an express agreement, except in the case of cost-book mining companies and of voluntary societies (*g*), the only mode in which a shareholder can retire from a company

(*z*) 1 Ch. 433. It was reversed upon the ground that neither buyer nor seller knew of the petition to wind up, and that under those circumstances a decree for specific performance could not have been made against the purchaser.

(*a*) 2 Eq. 554.

(*b*) [1891], 2 Q. B. 463.

(*c*) See *ante*, pp. 1129–30.

(*d*) *Onward Building Society* [1891], 2 Q. B. 463.

(*e*) *Taylor, Phillips, and Richard's cases* [1897], 1 Ch. 298, reversing [1896], 2 Ch. 851.

(*f*) *Ante*, pp. 710 *et seq.*

(*g*) *Finch* v. *Oake* [1896], 1 Ch. 409.

is by transferring his shares to some other person. If, therefore, a shareholder has surrendered his shares, and even if they have been cancelled by the directors, he will, nevertheless, be a contributory, as a present member, unless he can show that the company is bound by what has taken place. *Primâ facie*, directors have no right to accept a surrender of shares.

Morgan's case. Stanhope's case. Munt's case.

Morgan's case (*h*), *Stanhope's case* (*i*), and *Munt's case* (*k*), and the cases which arose on winding up the *Agriculturist Cattle Insurance Company* (*l*), the facts of which have been before stated (*m*), are leading authorities upon the subject now in question, and it appears from them, and other cases which will be found in the notes below, that, unless the constitution of a company is such as to warrant directors in accepting a surrender of shares, or unless an unauthorised surrender has been so acquiesced in by the company as to become binding upon it (*n*), a person whose shares have been surrendered will, nevertheless, remain liable to be a contributory, as a present member. This has been held where the directors would have had power to buy shares of the company out of certain accumulated funds if they had existed, but which, in fact, did not exist, and the shares were nevertheless purchased by the directors for the company in pursuance of a resolution passed at one general meeting of the shareholders (*o*), and ratified at another similar meeting (*p*). So, where the shares had been surrendered and cancelled considerably more than six years before the company was ordered to be wound up (*q*); where the cancelled

(*h*) 1 De G. & S. 750, and 1 Mac. & G. 225, *ante*, p. 711.

(*i*) 3 De G. & S. 198, *ante*, p. 711.

(*k*) 22 Beav. 55, *ante*, p. 712.

(*l*) *Stanhope's case*, 1 Ch. 161; *Stewart's case*, ib. 511; *Spackman* v. *Evans*, L. R. 3 H. L. 171; *Houldsworth* v. *Evans*, ib. 263.

(*m*) *Ante*, pp. 712–716

(*n*) As to which, see *Evans* v. *Smallcombe*, L. R. 3 H. L. 249, and other cases noticed, *ante*, pp. 712 to 716; and *Hunt's case*, 32 Beav. 387.

(*o*) *Ex parte Morgan*, 1 Mac. & G. 225, and 1 De G. & S. 750, *ante*, p. 711.

(*p*) *Lawes's case*, 1 De G. M. & G. 421. See, also, the cases in note (*l*). Such a power in the case of a limited company would now be invalid, *Trevor* v. *Whitworth*, 12 App. Ca. 409; see *ante*, p. 720.

(*q*) See the cases in note (*l*), and *Addison's case*, 5 Ch. 294. See, also, *Stanhope's case*, 3 De G. & S. 198, and *Richmond's Executors' case*, ib. 96.

shares had been allotted without authority (*r*); where it was part of the bargain when they were issued that they should be cancelled (*s*); where they had been transferred to the surrenderor in an informal manner (*t*); where they were those of dissatisfied shareholders, whose retirement was one of the terms of a compromise effected with them (*u*); where the shares were those of dissatisfied directors wishing to have nothing more to do with the company (*x*); where the shares were those of a person who had released all his claims upon the other shareholders, for such a release is not a release by them of their claims on him (*y*); where the shares were cancelled on non-payment of a call made for the purpose of enabling the shareholder to get rid of his shares (*z*); where the shares were cancelled at the request of the holders (*a*); where the shares were held by a trustee, and were cancelled pursuant to a compromise between the *cestui que trust* and the company (*b*); where the shares were cancelled and exchanged for other shares, pursuant to a scheme for amalgamating the company with another (*c*).

Upon precisely the same principles it has been held that persons who have agreed to become shareholders are contributories as present members, although the directors may have since agreed to cancel their shares (*d*).

Moreover, where there is a power to accept a surrender, and

(*r*) *Holt's case*, 1 Sim. N. S. 389.

(*s*) *Addison's case*, 5 Ch. 294. Compare *Miller's case*, 3 Ch. D. 661, and 5 ib. 70.

(*t*) *Walter's 2nd case*, 3 De G. & S. 244.

(*u*) *Bennett's case*, 5 De G. M. & G. 284, and 18 Beav. 339. *London and Provincial Consolidated Coal Co.*, 5 Ch. D. 515, where the persons retiring had subscribed the memorandum of association and no shares had been allotted. See, also, the cases *ante* in note (*l*), noticed *ante*, pp. 715, 716.

(*x*) *Munt's case*, 22 Beav. 55; *Daniell's case*, ib. 43, and on appeal, 3 Jur. N. S. 803; *Stanhope's case*, 3 De G. & S. 198. See *Walker's case*, 8 De G. M. & G. 607; *Ex parte Brown*, 19 Beav. 97, and the cases noticed, *ante*, pp. 711–716.

(*y*) *Ex parte Apps*, 18 L. J. Ch. 409.

(*z*) *Richmond's case*, 4 K. & J. 305.

(*a*) *Esparto Trading Co.*, 12 Ch. D. 191.

(*b*) *Barrett's case*, 4 De G. J. & Sm. 416. See *infra*, p. 1140, as to compromises.

(*c*) *Austin's case*, W. N. 1867, 138.

(*d*) See *Adams's case*, 13 Eq. 474; *Sidney's case*, 13 Eq. 228; *Hall's case*, 5 Ch. 707; *London and Provincial, &c., Coal Co.*, 5 Ch. D. 525.

a surrender is made colourably, but not *bonâ fide* in exercise of it, the surrenderor will be a contributory (*e*).

Persons who have duly surrendered their shares not contributories.

Where, however, the shareholders have power to relinquish their shares, and do relinquish them in the exercise of that power, then, as between themselves and the company, their liability is at an end, and on the winding up of the company they are not liable to be made contributories, unless it be as past members (*f*). There are many decisions under the older Acts to the effect that, under the circumstances now supposed, persons who had surrendered their shares were not contributories (*g*), even although the surrender was somewhat irregular (*h*). The same principles are applicable to surrenderors of shares in companies formed and registered under the Companies Act, 1862, though the extent to which a power of surrender can be conferred upon shareholders in companies limited by shares is still unsettled (*i*). The writer conceives the same to be true of unregistered companies wound up under that Act, although, if there are no present as distinguished from past members, surrenderors will be liable to be contributories if there are debts for which but for the Act they could be sued at law (*k*).

Distinction between surrendering shares and transferring them.

Before quitting this subject it is necessary to advert to the distinction between a transfer of shares and a surrender of them. A surrender which is carried out by a transfer to a

(*e*) *Hall's case*, 5 Ch. 707, and see, *infra*, p. 1141, under the head Forfeiture.

(*f*) As to companies governed by the Stannaries Act, 1887, see 50 & 51 Vict. c. 43, § 22.

(*g*) See *Fenn's case*, 4 De G. M. & G. 285, and 1 Sm. & G. 26; *Birch's case*, 2 De G. & J. 10; *Lofthouse's case*, ib. 69; *Bodmin United Mines*, 23 Beav. 370, all cases of cost-book mines.

(*h*) *Lane's case*, 1 De G. J. & S. 504; *Grady's case*, ib. 488; *Busk's case*, 3 De G. & S. 267, affirmed on appeal, see 16 Jur. 343; *Cockburn's case*, 4 De G. & S. 177; *Ex parte Bagge*, 13 Beav. 162; *Hawthorn's case*, 10 W. R. 572.

(*i*) See *ante*, pp. 719–721; and *Borough Commercial, &c., Building Society* [1893], 2 Ch. 242, a case of an unlimited company; *Teasdale's case*, 9 Ch. 54, where the power was given by special resolution altering the articles. This case was followed in *Eichbaum* v. *City of Chicago Elevators, Ld.* [1891], 3 Ch. 459, notwithstanding the observations on it in *Hope* v. *International Financial Soc.*, 4 Ch. D. 327, and *Trevor* v. *Whitworth*, 12 App. Ca. p. 418. *Thomas's case*, 13 Eq. 437; *Snell's case*, 5 Ch. 22, where the surrenderor had subscribed the memorandum of association. Compare *Hall's case*, ib. 707, where the transaction was held not to amount to a surrender.

(*k*) *Part's case*, 10 Eq. 622. See *ante*, p. 1116, note (*h*).

nominee of the company is treated as a surrender and not as a transfer (*l*); but if what is called a surrender of shares is in fact a *bonâ fide* transfer of them, the transferor will, as between himself and the company, be released from liability, and will not be a contributory, although the main object of the transfer may have been to enable him to get quit of the company (*m*). Moreover, even if the transfer is made to a person in trust for the company, but the transferor is ignorant of this fact, and throughout acts in the *bonâ fide* belief that he is transferring his shares to the transferee as an individual, the transfer will be valid, and the transferor will not be a contributory (*n*).

A transfer to an individual director, moreover, will not relieve the transferor from his liability if the transfer is not made with perfect *bona fides*, and so as to constitute the transferee a shareholder in respect of the shares transferred. In *Ex parte Brown* (*o*), a transfer by a director to a director was held invalid as between the transferor and the company, on the ground that the transfer was made irregularly, and the transferee had already as many shares as he was entitled to hold in his own right; and in *Ex parte Henderson* (*p*), a transfer by an auditor to a director was held invalid as against the company, because, in addition to the grounds relied upon in the last case, the transferor had made no attempt to transfer his shares in the proper manner, and had acted throughout with want of good faith.

Ex parte Brown.

Ex parte Henderson.

A person who has not bound himself to take shares, can waive any right to take them which he may have acquired; and an arrangement by which he abandons some and retains the rest, does not entitle the company to hold him a

Difference between surrendering shares and declining to take them.

(*l*) See *Addison's case*, 5 Ch. 294; *Lankester's case*, 6 Ch. 905, note, as explained by L.-J. Mellish, at p. 910; *Eyre's case*, 31 Beav. 177; *Benham's case*, 13 W. R. 483; *Clack's case*, W. N. 1866, p. 275, where dissentient shareholders retired. Compare next two notes.

(*m*) *Jessopp's case*, 2 De G. & J. 638. See, also, the next note.

(*n*) *Grady's case*, 1 De G. J. & Sm. 488; *Reeve's case*, 10 W. R. 817; *Hollwey's case*, 1 De G. & S. 777; *Nicol's case*, 3 De G. & J. 387; *Hughes' case*, 15 W. R. 476. Compare these with the last two notes.

(*o*) 19 Beav. 97.

(*p*) Ib. 107. Compare *Murray* v. *Bush*, L. R. 6 H. L. 37, affirming *Bush's case*, 6 Ch. 246, where there was irregularity, but no *mala fides*.

contributory in respect of more shares than he ultimately agrees to take (*q*). So if shares are allotted pursuant to an invalid resolution which is afterwards rescinded, and the shares are cancelled, the allottee will not be a contributory (*r*). So shares allotted by mistake as paid up may be withdrawn, and re-issued when the mistake has been rectified (*s*). Such cases as these do not turn on a shareholder's right to retire from a company, but on a person's right to withdraw from an unconcluded agreement, and to have mistakes corrected.

Compromise of doubtful liability.

Moreover, if there is a *bonâ fide* question whether a person is or is not a shareholder or bound to take shares, and such question is settled by a compromise, and he gives up all his rights (if any) against the company, and the company relinquishes all claims upon him, he will not be a contributory as a present member; although he might have been had there been no compromise, and although shareholders in the company may have had no right to surrender their shares (*t*).

Moreover, this principle applies although the parties may not have got so far as to dispute the question capable of being disputed between them (*u*). But in the absence of a *bonâ fide* dispute, or of a question capable of being *bonâ fide* made a matter of dispute, there can be no compromise, and no room therefore for the application of the principle in question (*x*).

Surrender under § 161.

A shareholder who in the course of winding up surrenders his shares under § 161 of the Companies Act, 1862, does not cease to be a contributory (*y*).

Building Societies.

The position of members of building societies who have given notice of withdrawal will be considered hereafter (*z*).

(*q*) See *Sahlgreen and Carrall's case*, 3 Ch. 323; *Meyer's case*, 16 Beav. 383; *Coleman's case*, 1 De G. J. & Sm. 495; *Hebb's case*, 4 Eq. 9. See, also, *Nicol's case*, 29 Ch. D. 421.

(*r*) *Barnett's case*, 18 Eq. 507.

(*s*) *Hartley's case*, ib. 542, and 10 Ch. 157; and *ante*, pp. 169 and 571.

(*t*) *Lord Belhaven's case*, 3 De G. J. & Sm. 41; *Fox's case*, 5 Eq. 118; *Blake's case*, 34 Beav. 639. See, also, *Bath's case*, 8 Ch. D. 334; *Hesketh's case*, 13 Ch. D. 693.

(*u*) *Dixon* v. *Evans*, L. R. 5 H. L. 606, reversing *Dixon's case*, 5 Ch. 79.

(*x*) *Adams's case*, 13 Eq. 474; *Dixon's case*, 5 Ch. 79, was decided on this principle, but was reversed on appeal. See the last note, and *Mercantile Investment Trust Co.* v. *International Co. of Mexico* [1893], 1 Ch. 484, note.

(*y*) *Vining's case*, 6 Ch. 96.

(*z*) *Infra*, Appendix No. III.

3. *As regards persons whose shares have been forfeited.*

Position of persons whose shares have been forfeited.

It was seen in a previous chapter, that the right to forfeit shares does not exist except where it is expressly conferred (*a*). Consequently, persons whose shares have been declared forfeited, do not cease to be shareholders, and are not relieved from their liability to be made contributories as present members, unless the forfeiture is warranted by the constitution of the company.

Persons whose shares have been duly forfeited not contributories.

On the other hand, where there is power to forfeit shares, and shares are *bonâ fide* forfeited in pursuance of the power, the shareholder who is thereby deprived of all interest in the company, is not liable to be made a contributory, as a present member, on its winding up (*b*), unless, notwithstanding the forfeiture, he continues, as between himself and the company, liable for its debts, which, although not an impossible, is a very improbable case. The fact that, notwithstanding the forfeiture, he remains liable for calls then due from him, does not make him a contributory in respect of such calls: he is merely a debtor to the company for them (*c*), and they can be recovered from him although the forfeiture took place more than a year before the commencement of the winding up (*d*).

Even when liable for calls before forfeiture.

Irregular forfeitures.

A power to forfeit is, however, one which must be exercised with great attention to the formalities prescribed by the instrument conferring it (*e*), and a person whose shares have

(*a*) *Ante*, p. 722.

(*b*) See, in addition to the cases cited in the next five notes, *Dawes's case*, 6 Eq. 232, where the forfeiture was in the interval between a resolution to wind up voluntarily, and a resolution confirming it; *Kelk's case* and *Pahlen's case*, 9 Eq. 107, and *Ex parte Collum*, ib. 236, where the forfeiture was for not bringing in certificates for registration. See, also, *Beresford's case*, 3 De G. & S. 175, and 2 Mac. & G. 197; *Ex parte Bailey*, 15 Jur. 29. These cases show that if a company's deed confers a power of forfeiture, that power may be exercised against a person who ought to execute, but has not, in fact, executed that deed. And see *Strick* v. *Swansea Tin Plate Co.*, 36 Ch. D. 558, where members expelled from a trade union were held to have no claim to share in the division of surplus assets.

(*c*) *Ladies' Dress Assocn.* v. *Pulbrook* [1900], 2 Q. B. 377; *Aaron's Reefs, Ld.* v. *Twiss* [1896], A. C. 273; *Randt Mining Co.* v. *Wainwright* [1901], 1 Ch. 184.

(*d*) *Ladies' Dress Assocn.* v. *Pulbrook* [1900], 2 Q. B. 377.

(*e*) *Ante*, p. 726.

been improperly forfeited will be a contributory as a present member under ordinary circumstances (*f*).

Nevertheless, if everything required to be done is substantially done by the company, and if the shares have been treated both by the company and by the shareholder as forfeited, the shareholder will not be a contributory. This is well exemplified in *Knight's case* (*g*), where there was power to forfeit for non-payment of calls, on giving certain notices, and by a resolution to that effect: a shareholder from whom calls were due, received notice in proper form that if his calls were not paid on a certain day his shares would be forfeited. He made default, and the secretary thereupon made an entry in the company's books to the effect that the shares were forfeited, and had been transferred to the company. By the regulations of the company the shareholder ought to have had notice of this; but no notice was sent to him; and no resolution to forfeit appeared in the company's books: indeed, it was tolerably plain that there had been no such resolution. The shareholder in question, however, had never acted or been treated as a shareholder after the forfeiture; and it was held, that a resolution to forfeit ought to be presumed, and the shareholder was accordingly held not to be a contributory.

Knight's case.

Intention to forfeit not carried out.

In the above case, it will be observed that there was power to forfeit, an intention to forfeit, and notice of that intention: and the intention was actually carried into effect, although not with due regularity. But, as has been seen on a former occasion, an intention to forfeit not carried into effect is no forfeiture

(*f*) *Esparto Trading Co.*, 12 Ch. D. 191, where there was no intention to forfeit the shares, but merely to cancel them; *Bottomley's case*, 16 Ch. D. 681, where the forfeiture was invalid owing to the number of directors being insufficient; *Garden Gully Mining Co.* v. *McLister*, 1 App. Ca. 39, where the forfeiture was invalid on the ground that it was made by persons not properly elected directors.

(*g*) 2 Ch. 321. See, also, *Woollaston's case*, 4 De G. & J. 437, reversing, on this point, *Woollaston's case*, 5 Jur. N. S. 617; *Lyster's case*, 4 Eq. 233, where the forfeiture was by two out of six directors; *King's case*, 2 Ch. 731 and 735, where the shares forfeited were illegally subdivided shares; and see *Webster's case*, 32 L. J. Ch. 135; *Grady's case*, 1 De G. J. & S. 488, and *Coleman's case*, ib. 495, as to presuming forfeiture. See, also, *Miller's case*, 3 Ch. D. 661, and 5 ib. 70, *infra*, note (*i*).

Bigg's case.

at all (*h*); therefore, where a shareholder received notice that if he did not pay his calls in arrear by a certain day his shares would be forfeited without further notice; and he paid his calls on some of his shares but not on others, stating that he should submit to their forfeiture, but the directors after all did not forfeit them, but kept his name on the books as it had been before the notice; he was held, on the subsequent winding up of the company, to be a contributory in respect of all his shares (*i*).

Improper exercise of power to forfeit.

Even when there is a power to forfeit, that power can only be exercised *bonâ fide* for the benefit of the company. If, therefore, a shareholder procures his shares to be forfeited in order that they may be cancelled and got rid of, or as part of a scheme by which he may be enabled to surrender his shares and retire from the company, he will remain a contributory notwithstanding the forfeiture (*k*). On the same principle a surrender of shares which is *ultra vires* cannot be treated as valid by being referred to a power of forfeiture, which was never really exercised (*l*).

Forfeiture in a winding up.

If a company is being wound up voluntarily, it may, in a general meeting, appoint directors, and sanction the exercise by them of the powers of forfeiture and sale contained in the articles of association, for the purpose of enforcing calls made by the liquidator (*m*).

Distinction between forfeiting shares and withdrawing shares not agreed to be taken.

A forfeiture of shares taken or agreed to be taken, must be distinguished from the withdrawal of shares allotted to a person, but which he has not bound himself to take, and has expressly or impliedly declined to accept. Whether any power to forfeit shares exists or not, such a person is not a contributory (*n*).

(*h*) *Ante*, p. 728.

(*i*) *Bigg's case*, 1 Eq. 309. In *Miller's case*, 3 Ch. D. 661, and 5 ib. 70, there was no notice or declaration of forfeiture, but it was a consequence of ceasing to be a director.

(*k*) *Richmond's and Painter's case*, 4 K. & J. 305, *ante*, p. 727. See, also, *Spackman* v. *Evans*, L. R. 3 H. L. 171; *Houldsworth* v. *Evans*, ib. 263; *Stanhope's case*, 1 Ch. 161; *Stewart's case*, ib. 511; noticed *ante*, pp. 711 to 716; *Gower's case*, 6 Eq. 77, where the member's name was still on the register.

(*l*) *Hall's case*, 5 Ch. 707; *Esparto Trading Co.*, 12 Ch. D. 191.

(*m*) *Ladd's case* [1893], 3 Ch. 450.

(*n*) *Goldsmid's case*, 16 Beav. 262; *Coleman's case*, 1 De G. J. & S. 495; *Belhaven's case*, 3 ib. 41. See, also, *Dixon* v. *Evans*, L. R. 5 H. L. 606, reversing *Dixon's case*, 5 Ch. 79, *ante*, p. 1140.

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Liability as past members.

The forfeiture of a share within a year before the commencement of the winding up of a company formed and registered under the Companies Act of 1862, does not relieve the former holder from his liability to be put on the list of contributories as a past member (*o*), even although he may have transferred them before the forfeiture (*p*); and even although the company's regulations are to the effect that forfeited shares are to be treated as extinguished (*q*).

SECTION XIV.—CALLS FOR DEBTS, ETC.

1. *Generally.*

Calls on contributories.

Having settled the list of contributories so far as he is able, the next thing which the liquidator usually finds it necessary to do, is to make calls on the contributories for the payment of the debts, losses, and liabilities of the company (*r*). The power of making calls on contributories was given to the Court by the Companies Act, 1862 (*s*); but in cases to which the Companies (Winding-up) Act, 1890, is applicable (*t*), this power is now exercised by the liquidator as an officer of the Court, and subject to its control; the liquidator, however, cannot make a call without either the special leave of the Court or the sanction of the committee of inspection (*u*). When a company is ordered to be wound up, the power of the directors to make calls ceases, and calls can only be made in the winding up (*x*).

Purposes for which calls may be made.

Calls may be made:

1. For the payment of the company's debts and liabilities;
2. For the payment of the costs of winding up; and

(*o*) *Bridger's case* and *Neill's case*, 4 Ch. 266; *Bath's case*, 8 Ch. D. 334. Compare *Hesketh's case*, 13 Ch. D. 693.

(*p*) *Bridger's case* and *Neill's case*, 4 Ch. 266.

(*q*) *Creyke's case*, 5 Ch. 63.

(*r*) These calls must not be confounded with calls made under a company's articles of association or deed of settlement. See *ante*, p. 573.

(*s*) Act, 1862, § 102.

(*t*) See as to the application of this Act, *ante*, p. 826.

(*u*) Act of 1890, § 13, and Rules, 1890, rr. 92 *et seq.* As to the committee of inspection, see *ante*, p. 961.

(*x*) *Fowler* v. *Broad's Patent Night Light Co.* [1893], 1 Ch. 724, and *infra*, p. 1150.

3. For the adjustment of the rights of the contributories amongst themselves (*y*).

Moreover, in making calls, the probability that some of the contributories will fail to pay the full amount due from them may be taken into consideration (*z*).

Time and amount of calls, &c.

With respect to the time for making calls, and the amount to be raised, the Companies Act, 1862, gives the Court a wide discretion (*a*). Even before the Act of 1890 the Court was, to a great extent, guided by the liquidator's view of what was required (*b*). Moreover, the Court of Appeal is very reluctant to interfere with the discretion of the Court of first instance upon such a question, as to whether the time has arrived for making a call, or as to the amount for which it should be made (*c*). A call can only be made upon persons who are settled on the list of contributories (*d*); but it is not necessary to wait until the list is completed (*e*); nor until the assets of the company have been realised or have been ascertained to be insufficient to discharge its liabilities (*f*); nor until the claims against the company have been established (*g*). Moreover, although shares have been allotted on the terms that they shall be paid up by instalments, if the company goes into liquidation before the instalments are payable, the liquidator may make an immediate call for the whole amount unpaid on the shares (*h*).

Practice as to calls.

If the liquidator desires to make a call, and there is a committee of inspection, he may summon a meeting of the

(*y*) Act of 1862, § 102. See, also, §§ 38, 196, cl. 5, and § 200.

(*z*) Ib. § 102.

(*a*) Ibid.

(*b*) See *Helbert* v. *Banner*, L. R. 5 H. L. 28; *The Contract Corporation*, 2 Ch. 95.

(*c*) Ibid.

(*d*) See the Act of 1862, § 102.

(*e*) Ibid., and see, as to past members, *Creykes' case*, 5 Ch. 66; and see *Helbert* v. *Banner*, L. R. 5 H. L. 28. See *Underwood's case*, 5 De G. M. & G. 677, where the list was in such a state that it was held no call could be made.

(*f*) § 102. *Helbert* v. *Banner*, L. R. 5 H. L. 28; *Gay's case*, 1 De G. M. & G. 347; *Greenwood's case*, 3 ib. 459.

(*g*) *Contract Corporation*, 2 Ch. 95, noticed *infra*, p. 1150.

(*h*) *Cordova Union Gold Co.* [1891], 2 Ch. 580. See, too, *London, &c., Provident Building Soc.* v. *Morgan* [1893], 2 Q. B. 266, as to members of building societies who have received advances repayable by instalments.

When there is a committee of inspection.

committee for the purpose of obtaining their sanction to the intended call (*i*). Every contributory has a right to attend the meeting and be heard, or to make any communication in writing to the liquidator or members of the committee, to be laid before the meeting, with reference to the intended call (*k*). At the meeting of the committee, any statements made either to the meeting personally or addressed in writing to the liquidator or members of the committee, must be considered before the call is sanctioned (*l*); such sanction must be given by a resolution passed by a majority of the members of the committee present (*m*), and the majority of the whole committee must be present (*n*).

When there is no committee of inspection.

If there is no committee of inspection, the liquidator must obtain the leave of the Court to make a call (*o*). The application for such leave must be made by summons, stating the proposed amount of the call; the summons must be served four clear days at least before the day appointed for making the call upon every contributory proposed to be included in it, unless the Court dispenses with such service, and directs notice of the call to be given by advertisement (*p*). The application is supported by an affidavit of the liquidator (*q*).

Notice of the call.

When a call has been made by the liquidator in pursuance of a resolution of the committee of inspection or an order of the Court, a copy of the resolution or order must be served on each contributory included in the call, together with a notice from the liquidator specifying the amount or balance due from him in respect of the call; but the resolution or order need not be advertised, unless for special reason the Court so directs (*r*).

(*i*) Rules, 1890, r. 92 (1). As to the notices and the statement to accompany such notices and advertisements to be given to the members of the committee, see r. 92 (2) and forms 54 and 55.

(*k*) Rules, 1890, r. 92 (2).

(*l*) Ib. r. 92 (3).

(*m*) Ib. r. 92 (4), and for form of resolution, see form 56.

(*n*) Act, 1890, § 9 (3). *Semble*, that is a majority of the members for the time being.

(*o*) Rules, 1890, r. 92 (5).

(*p*) Ib. r. 93, and for form of summons, form 58, and advertisement, form 60.

(*q*) See form 59.

(*r*) Rules, 1890, r. 94, and forms 57, 61, & 62. As to service see r. 21, and Comp. Act, 1862, § 63; as to substituted service, see *Ellis's case*, 3 De G. & S. 172. As to service abroad, see *ante*, p. 926. In *Ex parte D'Urban*, 18 Jur. 781, notice sent by post to a person abroad was held good, though it reached him after the day appointed for payment. As to

Order for a call.

If the resolution or order and the notice state (as it is apprehended they may) that interest will be charged in case of non-payment on the day named, such interest will be payable (*s*). But provisions in a company's articles of association for the payment of interest on calls do not apply to calls made in winding up (*t*).

Balance order.

If default is made by any contributory in payment of the sum which he has thus been required to pay, another and special order, called a balance order, is made, requiring him to pay what is due from him within four days after service (*u*).

Mode of enforcing balance order.

Upon non-compliance with this order it may be enforced in the way in which orders in the Chancery Division of the High Court are usually enforced (*x*), *i.e.*, by *fi. fa.*, &c., or by sequestration (*y*). A writ of *ne exeat regno* to prevent a contributory from absconding without paying a call made upon him will be granted on motion *ex parte* (*z*).

Liability for calls.

Calls made in the winding up of a company are specialty debts, binding heirs (*a*); and provision is made for obtaining payment out of the real as well as out of the personal estates of deceased contributories (*b*); and the liability to a call is considered as commencing at the time when the shares in respect of which they are made were taken (*c*); and executors

the affidavits of service, see *Natle Slate Co.*, 7 W. R. 319; *Re Job*, 27 Beav. 32.

(*s*) *Barrow's case*, 3 Ch. 784; *Ex parte Lintott*, 4 Eq. 184.

(*t*) *Welsh Flannel and Tweed Co.*, 20 Eq. 360, a case of voluntary winding up.

(*u*) Rules, 1890, r. 95, and see the forms of affidavit by liquidator, form 63 of order, form 64 of affidavit of service of order, form 65. This order ought not to be issued against a bankrupt contributory, against whose estate the call can be proved. *Mitchell's case*, 5 Ch. 400.

(*x*) See Comp. Act, 1862, § 120, and Rules, 1890, rr. 20 *et seq.* As to enforcing orders in Scotland, see ib. § 121.

(*y*) *Ante*, p. 949.

(*z*) *Mawer's case*, 4 De G. & S. 349. See *Jackson* v. *Petrie*, 10 Ves. 164.

(*a*) See Comp. Act, 1862, § 75. *Re Muggeridge*, 10 Eq. 443; *Buck* v. *Robson*, ib. 629. It was otherwise under the older Acts. See *Robinson's Exors. case*, 6 De G. M. & G. 572.

(*b*) Ib. §§ 105 and 106, and see § 76, and *ante*, pp. 1109 *et seq.* As to enforcing payment of a call out of the assets of a deceased Scotch shareholder, see *Wryghte* v. *Lindsay*, 3 McQueen, 772.

(*c*) Ib. § 75, and *ante*, pp. 1027–8. See on this section, *Christie* v. *Taunton, Delmard, &c., Co.* [1893], 2 Ch. pp. 184–5; *Whittaker* v. *Kershaw*, 45 Ch. D. p. 326; *Ex parte Hatcher*, 12 Ch. D. 284; *Ex parte Mackenzie*, 7 Eq. 240; *Hastie's case*, ib. 3, and 4 Ch. 274; *Martin's Patent Anchor Co.* v. *Morton*, L. R. 3 Q. B. 306; *Ex parte Canwell*, 4 De G. J. & Sm. 539,

as such are liable to calls in respect of debts contracted by the company since their testator's death (*d*). Calls may be proved against the estate of bankrupt contributories (*e*).

Nature of balance order.

An order for payment of a call might formerly have been registered (*f*); and it may be made the foundation of a charging order, under 1 & 2 Vict. c. 110 (*g*). But a balance order cannot be sued upon (*h*); nor made the foundation of a bankruptcy notice (*i*); nor if made against an executor does it prevent him from retaining his own debt out of the testator's assets (*k*). Moreover, it cannot be served out of the jurisdiction (*l*).

For calls made before the winding up.

The payment of calls made before the winding up may be enforced by a balance order, but the balance order is not a judgment, and the original debt is not merged in it; if, therefore, the liquidator fails to obtain payment of such calls under a balance order, he may still bring an action in the name of the company for the amount of the calls (*m*).

Attachment of proceeds of call.

The proceeds of a call made to pay a creditor of the company might have been attached under the Common Law Procedure Act, by his judgment creditors (*n*).

Appeal from order.

An order for a call may be appealed from by any contributory on whom it is made (*o*), and he may on the appeal show, if he can, that although his name is on the list of contributories, it ought not, in truth, to be there (*p*). But he will not be

and the cases cited in note (*a*). Compare *Williams* v. *Harding*, L. R. 1 H. L. 9.

(*d*) *Baird's case*, 5 Ch. 725; *Blakeley's case*, 13 Beav. 133, and 3 Mac. & G. 726.

(*e*) See, as to this, *ante*, pp. 753 *et seq.*

(*f*) *Ex parte Thomas*, 9 C. B. 740.

(*g*) *Re Connell*, 25 L. J. Ch. 649. See R. S. C. Ord. XLVI., r. 1.

(*h*) *Chalk, Webb & Co.* v. *Tennent*, W. N. 1887, p. 159; *Westmoreland, &c., Slate Co.* v. *Feilden* [1891], 3 Ch. 15.

(*i*) *Ex parte Grimwade*, 17 Q. B. D. 357; *Ex parte Whinney*, 13 ib. 476.

(*k*) *International Marine, &c., Co.* v. *Hawes*, 29 Ch. D. 934.

(*l*) See *Westmoreland, &c., Slate Co.* v. *Feilden* [1891], 3 Ch. 15, p. 16.

(*m*) *Westmoreland, &c., Slate Co.* v. *Feilden* [1891], 3 Ch. 15, and Act, 1862, § 101.

(*n*) See *Prichard's claim, Ex parte Turner and Smith*, 2 De G. F. & J. 354. The section (§ 61) has now been repealed and is replaced by R. S. C. Ord. XLV.; *Rapier* v. *Wright*, 14 Ch. D. 638.

(*o*) See *ante*, p. 949. *Longworth's Executors' case*, Johns. 461.

(*p*) *Londesborough's case*, 4 De G. M. & G. 411. As to obtaining back money already paid for calls, see *Ex parte Holroyd*, 15 Jur. 696; *Ex parte Day*, 3 Jur. N. S. 1016; *Alison's case*, 9 Ch. 2.

allowed to go into this matter if any considerable time has elapsed since his name was settled on the list, or if he has acquiesced in being made a contributory (*q*); nor will he be allowed to dispute the validity of the winding-up order (*r*).

When there is no order.

If the call is made by the liquidator in pursuance of a resolution of the committee of inspection, there is no order for the call. It is, however, conceived that in such a case any contributory might appeal to the Court as a person aggrieved by the act of the liquidator in making the call (*s*).

Application to remove name from list.

Where a person is settled on the list, and a call is made upon him, and he resists payment on the ground that he is not a contributory, he should apply to have his name removed from the list, and to have the proceedings to enforce payment of the call stayed; he must, however, be prepared to pay the call into Court (*t*).

The power of liquidators to effect compromises with contributories has already been alluded to (*u*).

2. *Calls for debts.*

The proper mode of providing funds for the payment of a debt due from a company which is being wound up is by making a call on its contributories, and not by ordering them to pay the debt (*x*).

Right of creditor to require a call to be made.

Under the Acts of 1848 and 1849, a creditor of a company was not entitled, as creditor, to require a call to be made for his payment. His remedy, if he had a judgment already, was to enforce it against those individuals who were liable to it, and, if he had no judgment, then to obtain one against the official manager, and enforce it as before (*y*). The persons proceeded against could require a call to be made for their own indemnity, but it was only in this manner that a creditor,

(*q*) *Underwood's case*, 5 De G. M. & G. 677.

(*r*) *Arthur Average Association*, 3 Ch. D. 522; *London Marine Insurance Association*, 8 Eq. 176.

(*s*) Act, 1890, § 24.

(*t*) See *Oakes' case*, and *Peek's case*, W. N. 1866, 361; *London Bank of Scotland*, 2 ib. 114; *Jopp's case*, ib. 192.

(*u*) *Ante*, pp. 984 *et seq.*

(*x*) See *Re Cameron Coalbrook, &c., Co.*, 30 Beav. 216.

(*y*) See *ante*, pp. 823, 824.

as such, could obtain payment under the Acts of 1848 and 1849, if driven to his strict rights (*z*). If, however, the creditor was himself a contributory, he was, even under the Acts of 1848 and 1849, entitled to require a call to be made for his own payment (*a*); and when creditors became parties to the winding up under the Act of 20 & 21 Vict. c. 78, and were thereby disabled from proceeding at law, they were entitled as creditors to require a call to be made for payment of their allowed demands. Under the Companies Act, 1862, a creditor who has established his debt against the company is entitled to have a call made for his payment on those contributories who are liable to calls.

Debenture holders.

When, as is frequently the case, the uncalled capital of the company is charged in favour of debenture holders, and the whole proceeds of the calls to be made in the winding up will belong to them, the calls must nevertheless be made by the liquidator, though if a receiver has been appointed in a debenture holder's action, he may be empowered to take proceedings in the name of the liquidator to enforce payment of them (*b*).

For what debts calls may be made.

The only debts for the payment of which calls can be made, are the debts proved against the company being wound up (*c*); whether the debt is equitable or legal is unimportant (*d*); but no call can be made for providing a fund which may or may not be wanted (*e*). Nevertheless it was decided in the case of the *Contract Corporation* (*f*), that it is not necessary that disputed debts shall be finally established against the company before calls in respect of them are made.

Contract Corporation.

Under the Winding-up Acts of 1848-49 it was held, that

(*z*) See *Thompson* v. *Norris*, 5 De G. & S. 686; and *Prichard's case*, 5 De G. M. & G. 484.

(*a*) *Gleadow* v. *Hull Glass Co.*, 15 Beav. 200.

(*b*) *Fowler* v. *Broad's Patent Night Light Co.* [1893], 1 Ch. 724. The liquidator is entitled to be indemnified by the debenture holders.

(*c*) See *Wryghte's case*. 2 De G. M. & G. 636; and see *Marylebone Bank*, 18 Jur. 281.

(*d*) *Terrell* v. *Hutton*, 4 H. L. C. 1091.

(*e*) *Marylebone Bank*, 18 Jur. 281, and see *ante*, pp. 1017-18, as to providing funds to answer possible claims by landlords.

(*f*) 2 Ch. 95. See, also, *Helbert* v. *Banner*, L. R. 5 H. L. 28, which shows that the Court will act on the estimates of the liquidator.

before a call could be made on any particular contributory settled on the list, his liability to contribute (*g*) to the debt to pay which the call was made, must have been established (*h*); for it by no means follows that every person settled on the list is liable to all the calls which it may be necessary to make in the course of winding up the company (*i*). Thus, if debts had been incurred by the directors, and such debts were provable against the company, but ought, as between the directors and the shareholders, to be borne by the former, the call for the payment of those debts must have been first made on the directors exclusively. This was held where the directors had expressly guaranteed the shareholders against all loss (*k*); where the debts in question had been incurred by the directors in excess of the authority reposed in them (*l*); and where they had been contracted by the directors, who had fraudulently obtained a covenant for their own indemnity (*m*).

In applying these decisions, however, to companies which are wound up under the Companies Act, 1862, it is necessary to bear in mind not only the difference between the position of creditors under that Act and the older Acts, but also the rule that calls on past members form part of the general assets of the company, and are not specifically applicable to any particular debt (*n*). The proper mode of dealing with such cases as the above under the Act of 1862, is, if necessary (*o*), to make a call on all the contributories, liable as present members, and to pay the creditors, and afterwards adjust the rights of the contributories *inter se* (*p*).

Calls for costs.—See *infra*, § 15.

(*g*) Direct liability to creditors was not the test of liability to calls under the Winding-up Acts of 1848–49. *Hopkinson's and Underwood's case*, 7 De G. M. & G. 193.

(*h*) *Upfill's case*, 1 Sim. N. S. 395; *Hunter's case*, ib. 435; *Marylebone Bank*, 18 Jur. 281.

(*i*) See *Ex parte Mansfield*, 2 Mac. & G. 67, *per* Lord Cottenham.

(*k*) *Mowatt and Elliott's case*, 3 De G. M. & G. 254, reversing *Ex parte Mowatt*, 1 Drew. 247; *Londesborough's case*, 4 De G. M. & G. 411.

(*l*) *Ex parte Cropper*, 1 De G. M. & G. 147; *Worcester Corn Exchange Co.*, 3 ib. 180. Compare *Ex parte Chippendale*, 4 ib. 19, and *Ex parte Bignold*, 22 Beav. 143.

(*m*) *Carew's case*, 7 De G. M. & G. 43; and see *Walker's case*, 8 ib. 607.

(*n*) *Webb* v. *Whiffin*, L. R. 5 H. L. 711.

(*o*) See under the next head.

(*p*) See the judgments in the

3. *Calls for the adjustment of the rights of the contributories.*

Calls for adjustment of rights of the contributories inter se.

It is the duty of the judge acting in the winding up, to adjust and finally settle all cross claims between the contributories (*q*); but this does not prevent a call from being made on them all alike, and any inequalities of payments found to exist on taking the whole of the accounts between them may be afterwards adjusted. If, for example, several of the contributories have already paid to the company more than others, who ought to have paid as much as they, a call may nevertheless be made on all alike if it is necessary to raise a fund at once for defraying some loss or expense to which they are all liable; the temporary injustice produced by such a call may be set right afterwards (*r*). At the same time, such temporary injustice ought, if possible, to be avoided; and a call ought not to be made on the general body of contributories if it appears that any of them are indebted to the company in sums which can readily be recovered, and which, if recovered, would render the call unnecessary (*s*).

Paid-up and unpaid-up shares.

If in an unlimited company there are two classes of shareholders, viz., holders of shares paid up, and holders of shares not paid up, the latter ought to be called upon to pay up their shares before any call is made on the former (*t*). Again, in limited companies where some of the shares are paid up in full but others are not, calls ought to be made on the holders of the unpaid-up shares in favour of the holders of the paid-up shares, in order to put all the shareholders on an equality (*u*);

Contract Corporation, 2 Ch. 95, and *Helbert* v. *Banner*, L. R. 5 H. L. 28.

(*q*) *I.e.*, *quâ* contributories, *Alexandra Palace Co.*, 23 Ch. D. 297. See § 109 of the Companies Act, 1862, and *Marylebone Joint Stock Bank Co.*, 25 L. J. Ch. 650; *Ex parte Perrier*, 7 Ir. Ch. Rep. 256; *Ex parte Dayrell*, and *Ex parte Lowndes*, 1 Jur. N. S. 1129.

(*r*) See *Gay's case*, 5 De G. & S. 122, and 1 De G. M. & G. 347; *Preece and Evans' case*, 2 De G. M. & G. 374.

(*s*) *Gay's case*, 1 De G. M. & G. 347; *Underwood's case*, 5 ib. 677. See, too, *The Marylebone Bank*, 18 Jur. 271; and see above, notes (*l*), (*m*), (*p*).

(*t*) See last note, and as to paid-up shares, *ante*, pp. 1075 *et seq.*

(*u*) *Anglesea Colliery Co.*, 2 Eq. 379, and 1 Ch. 555; *Crookhaven Mining Co.*, 3 Eq. 69; *Scinde, Punjaub, and Delhi Corp.*, 6 Ch. 53, note; *Ex parte Maude*, ib. 51; *Gibson & Co.*, 5 L. R. Ir. 139; *Newtownards Gas Co.*, 15 L. R. Ir. 51.

unless the regulations of the company exclude the right to such a call (*x*). Moreover, as it is *ultra vires* for a limited company registered under the Companies Act, 1862, to issue shares at a discount or by way of bonus, although authorised to do so by its articles of association, the holders of such shares are liable to calls for the amounts unpaid on their shares whether such calls are required for the adjustment of the rights of the contributories *inter se*, or for the payment of debts (*y*).

Shares issued at a discount.

Again, in some insurance societies calls ought not to be made on policy-holders who are members until calls have been made on the shareholders (*z*).

Policy holders.

In settling the cross claims of contributories, a call cannot, it seems, be made on a contributory otherwise than in respect of the shares standing against his name in the list of contributories (*a*); or in the case of a company limited by guarantee and not having a capital divided into shares, otherwise than in respect of the amount due from him under his guarantee (*b*). But, as already seen, calls have been made for payment of money owing to the company by its officers (*c*); and in one case it was held that where directors were liable to make good losses incurred by their own fraudulent conduct, the shareholders have a right to have a call for the whole amount made on those, or that one of the directors who was able to pay (*d*).

Calls on a contributory otherwise than in respect of his shares.

4. *Limit of liability to calls.*

a) Present members.

The extent to which contributories are liable to calls depends, in the first place, on the nature of the company.

Extent of liability to calls.

(*x*) As in *Eclipse Gold Mining Co.*, 17 Eq. 490; *Doncaster Permanent Building Society*, 4 Eq. 579; and *Holyford Mining Co.*, Ir. L. R., 3 Eq. 208.

(*y*) *Welton* v. *Saffery* [1897], A. C. 299. See, too, *Weymouth Steam Packet Co.* [1891], 1 Ch. 66.

(*z*) *Albion Life Ass. Soc.*, 16 Ch. D. 83.

(*a*) See *Addison's case*, 20 Eq. 620, where a call to enforce a contract of indemnity was refused. But see note (*d*).

(*b*) *Baird's case* [1899], 2 Ch. 593, and *ante*, pp. 1143, 1144.

(*c*) *Ante*, p. 1151. But see now *infra*, p. 1155, note (*o*).

(*d*) See *Ex parte Perrier*, 7 Ir. Ch. Rep. 256, where one contributory had to pay the whole value of nominally paid-up shares which had been fraudulently obtained by him from the company, and had been afterwards given by him to the directors who enabled him to commit the fraud.

Bk. IV. Chap. 1. Sect. 14.

1. Where company is not limited.

If the company is one, the liability of whose members is not limited by the Legislature or the Crown, or by registration as a limited company, the amount of the calls which may be made upon the contributories is limited only by the debts and engagements of the company, and the costs of winding up, and the sums, if any, which may be required for the adjustment of the rights of the contributories amongst themselves (*e*).

In those cases in which, by the constitution of the company, the liability of its shareholders as between themselves is limited to the amount of their respective shares, a call may be made upon them to the full amount of those shares not already paid up (*f*); and even beyond that amount, if, notwithstanding the constitution of the company, the liability of the shareholders to the creditors is unlimited (*g*). But if the liability of the shareholders is, as between them and the creditors of the company, limited to the amount unpaid up of their respective shares, then no calls for the payment of the debts of the company can be made beyond the same amount (*h*); although even then the liability for calls in respect of costs will be unlimited (*i*).

2. Where company is limited.

If, on the other hand, the company is one, the liability of whose members is limited by the Legislature or the Crown, or by registration as a limited company, the amount of calls which may be made upon the contributories cannot exceed the limit imposed by the Legislature or the Crown, or by the Companies Act, 1862, as the case may be.

With respect to companies formed and registered under the last-mentioned Act with limited liability, the Act declares,

By shares.

1. That in the case of a company limited by shares, no contribution shall be required from any member exceeding the

(*e*) See, as to mutual marine insurance societies, *Andrews and Alexander's case*, 8 Eq. 176; *Lion Insurance Association* v. *Tucker*, 12 Q. B. D. 176; *Arthur Average Association*, 3 Ch. D. 522.

(*f*) *Talbot's case*, 5 De G. & S. 386.

(*g*) *Greenwood's case*, 3 De G. M. & G. 459, reversing S. C., 2 Sm. & G. 95. See *Marylebone Joint Stock Banking Co.*, 25 L. J. Ch. 650.

(*h*) *Prince of Wales Life Assur. Society*, Johns. 80, affirmed 3 De G. & J. 660. See, also, the Companies Act, 1862, § 38, cl. 6; and *ante*, pp. 354 *et seq.*

(*i*) *Lethbridge* v. *Adams*, 13 Eq. 547.

amount, if any, unpaid on the shares, in respect of which he is liable as a present or a past member (*k*); and

By guarantee.

2. That in the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association (*l*). With respect, however, to companies limited by guarantee, and having capitals divided into shares, it is also declared that any share of capital that may not have been called up shall be deemed assets of the company, and be a debt due to the company from each member, to the extent of any sums unpaid on any shares held by him, and shall be payable at such time as the Court may appoint (*m*).

Exceptional liabilities.

It must also be borne in mind that, even if a company is limited, the liability of its directors may be unlimited if the memorandum of association so provides (*mm*). Moreover, its articles may contain clauses obliging holders of paid-up shares to contribute to some particular debt (*n*); but it would seem that such contributions can only be recovered by action, and not by means of calls in the winding up (*o*). If the company is a banking company issuing notes, the liability of its contributories in respect of those notes is not limited (*p*).

Limited banking companies.

3. Company originally unlimited but afterwards limited.

It has already been seen that a company formed before November, 1862, as an unlimited company, may be registered under the Companies Act, 1862, as a limited company (*q*), and

(*k*) Comp. Act, 1862, § 38, cl. 4. As to calls on the holders of fully paid-up shares who have received back part of the capital or assets of the company, compare *Cardiff Coal Co.*, 2 N. R. 562, and 11 W. R. 1007, with *Cardiff, &c., Coal Co.* v. *Norton*, 2 Eq. 558, and 2 Ch. 405; and see *Moxham* v. *Grant* [1900], 1 Q. B. 88, *ante*, p. 540, and *Stringer's case*, 4 Ch. 475; *Rance's case*, 6 ib. 104. As to the power of the Court on a reduction of capital to allow a return of paid-up capital on the footing that it is liable to be called up again, see *ante*, p. 560, note (*a*), and Companies Act, 1880, § 3, *ante*, pp. 562, 563.

(*l*) Ib. § 38, cl. 5. *Baird's case* [1899], 2 Ch. 593.

(*m*) Ib. § 90.

(*mm*) Comp. Act, 1867, §§ 4 & 5, and as to other exceptional liabilities, see *ante*, pp. 363, 364.

(*n*) As in *Maxwell's case*, 20 Eq. 585, and *McKewan's case*, 6 Ch. D. 447. And in a mutual marine insurance society limited by guarantee, see *Lion Insurance Association* v. *Tucker*, 12 Q. B. D. 176; *Baird's case* [1899], 2 Ch. 593.

(*o*) See *Baird's case* [1899], 2 Ch. 593, and the observations therein on *Maxwell's case* and *McKewan's case*.

(*p*) See the Companies Act, 1879, § 6. This Act repealed § 182 of the Companies Act, 1862.

(*q*) *Ante*, pp. 157 and 364.

that a company originally registered as an unlimited company may be re-registered as limited (*r*). But such registration does not affect the obligation of the company or its shareholders to discharge in full the debts and liabilities of the company contracted whilst the company was unlimited (*s*); and in a case of this description, it has been decided that calls may be made on the shareholders in the unlimited company, beyond the amount unpaid up on their shares in the limited company (*t*).

b) Past members.

1. Companies formed and registered under the Act of 1862.

1. As regards companies formed and registered under the Companies Act, 1862, the extent of a contributory's liability to calls depends further on whether at the time of the presentation of the winding-up petition he was or was not a member of the company. With respect to retired members the Act in substance declares,

1. That no past member shall be liable to contribute if he has ceased to be a member for a year or more before the commencement of the winding up (*u*).

2. That no past member shall be liable to contribute in respect of any debt or liability of the company contracted after he ceased to be a member (*x*).

3. That no past member shall be liable to contribute unless the existing members are unable to pay their contributions (*y*).

In giving effect to these provisions, considerable difficulties arise. Such of them as affect the liability of past members to be settled on the list of contributories have been already

(*r*) Companies Act, 1879, § 4, and *ante*, p. 464.

(*s*) Ib. The remedy of the creditors is affected, but not their right to payment. See *ante*, pp. 174, 390, *et seq.*

(*t*) *Garnet and Moseley Gold Mining Co.* v. *Sutton*, 3 Best & Sm. 321; *Ex parte Stevenson*, 32 L. J. Ch. 97. Compare *Fountain's case*, 11 Jur. N. S. 553, L. C., which turned on the Industrial and Provident Societies Act.

(*u*) Comp. Act, 1862, § 38, cl. 1, and § 84. As to the liability of members whose shares have been forfeited for calls then in arrear, see *Ladies Dress Association* v. *Pulbrook* [1900], 2 Q. B. 377, and *ante*, p. 1141.

(*x*) § 38, cl. 2.

(*y*) § 38, cl. 3. See as to past and present members of insurance companies, *Hesketh's case*, 13 Ch. D. 693; *Bath's case*, 8 Ch. D. 334. *Bath's case*, 11 Ch. D. 386, is overruled.

alluded to (z); but assuming a past member to be properly on the list, the question still remains what calls can be made upon him? He is not liable to any call in respect of any debt or liability contracted after he ceased to be a member (a); but he is liable in respect of all debts contracted before that time and subsisting at the date of the winding-up order, even although they were contracted before he became a member (b); and if the assets of the company, including the contributions of the present members, are not sufficient to discharge the whole of the liabilities of the company, the past members become liable to have a call made upon them in respect of those debts. But the amount of the call cannot exceed the unpaid residue of the debts in respect of which the past members are liable to be put on the list: all payments made by the liquidator out of the assets of the company in respect of those debts enure for the benefit of the past members and diminish their liability (c). In limited companies the liability of each past member is further limited by the amount unpaid up of his shares.

No marshalling of calls.

Again, the money raised by calls made on past members becomes part of the general assets of the company, applicable to the payment of all its debts and liabilities, without reference to the time when they were contracted (d), and also to the costs of winding up (e). There is no marshalling either of debts or of assets for the benefit either of creditors or of members (f). The consequences of this as regards costs will be seen hereafter (g).

2. Other companies.

2. As regards companies not formed under the Companies Act, 1862, the liability of past members to calls depends on sections 196 and 200 (h), which do not exonerate members who

(z) *Ante*, pp. 1113 *et seq.*

(a) § 38, cl. 2, and see § 133; *Andrew's case*, 4 Eq. 458, and 3 Ch. 161.

(b) *Helbert's case*, 6 Eq. 509, and L. R. 5 H. L. 28, *sub nom. Helbert* v. *Banner; Webb* v. *Whiffin*, L. R. 5 H. L. 711.

(c) *Brett's case* and *Morris's case*, on the rehearing, 8 Ch. 800; and see the same cases on the first hearing, 7 Ch. 200, and 6 Ch. 800.

(d) *Webb* v. *Whiffin*, L. R. 5 H. L. 711, affirming *Briton, &c., Life Ass.*, 5 Ch. 428.

(e) Ib.

(f) See *Webb* v. *Whiffin*, L. R. 5 H. L. 711, correcting *Brett's case*, 6 Ch. 800, and *Morris's case*, 7 ib. 200, and *Brett's case and Morris's case*, 8 Ch. 800, on the rehearing.

(g) See *infra*, § 15.

(h) See, as to registered companies, § 196, cl. 5, and as to unregistered companies, § 200.

have retired more than a year before the commencement of the winding up from liability. Consequently, if there are debts to which past members are still liable, and which present members cannot pay (*i*), calls must be made on the past members. The amount of call must, it is apprehended, be decided on the principles explained when considering the liability of these persons to be on the list of contributories (*k*).

Past members not sureties.

As has been already pointed out, past members are not in the position of sureties, and are not discharged by compromises made with present members before the past members are settled on the list (*l*); nor by the forfeiture of their shares (*m*).

Benefit Building Societies.

The liability of past members of Benefit Building Societies will be noticed hereafter (*n*)

5. *Set-off against calls.*

Set-off against calls.

If the company is indebted to a contributory on whom a call is made, his right to set off the amount due to him from the call upon him has to be considered. With reference to this subject, it is important to determine whether his claim against the company arises simply from his being a member of the company; or whether it arises from some transaction with the company which would give him a claim against it even if he were not a member. If his claim is of the first description, *e.g.*, if it is a claim to dividends or profits, no set-off is allowed, to the prejudice of the creditors of the company; but the claim must be taken into account in finally adjusting the rights of the contributories amongst themselves; and this rule applies as well to unlimited as to limited companies (*o*). If, on the other hand, his claim is of the second description, then the ordinary doctrines of set-off apply in his favour if the company is unlimited, but not if it is limited (*p*). In other

(*i*) See, as to this, *ante*, p. 1039, and pp. 1113 *et seq.*

(*k*) *Ante*, pp. 1115–16.

(*l*) *Ante*, p. 1119.

(*m*) *Ante*, p. 1144.

(*n*) *Infra*, Appendix III.

(*o*) See Comp. Act, 1862, § 38, cl. 7, and § 101.

(*p*) Ib. *Black & Co.'s case*, 8 Ch. 254. § 10 of the Judicature Act, 1875, has not changed the law, *Gill's case*, 12 Ch. D. 755.

words, where the company is limited, no set-off is allowed, as against the company, except to the extent of setting off a call made and payable by a contributory against a dividend payable to him in respect of his debt: whilst if the company is unlimited, any debt owing by it to a contributory, otherwise than in respect of his shares, may be set off against calls made upon him (*q*).

In limited companies.

In this respect the law as to unlimited companies is the same as it was under the Winding-up Acts of 1848–49. Under them it was held that where the company was indebted to a contributory otherwise than in respect to his shares (*r*), he might set off the amount of that debt from calls made upon him (*s*); and, if necessary, calls for his reimbursement were made on the other contributories (*t*); and unless their liability, as between him and them, was clearly limited to the amount of their respective shares, it was no answer to a call on them for his indemnity, that they had already paid up their shares in full (*u*).

In unlimited companies.

Where an order is made to wind up a limited company, and the costs are ordered to be paid by the company to the petitioner, he is entitled to receive these costs, although he may be a debtor to the company before they are paid (*x*).

Set-off against costs.

Where a company before the commencement of the winding up had brought an action against a shareholder for calls, and the liquidator discontinued the action and took out a summons against the shareholder, whom he had placed on the list of contributories, for a balance order in respect of the calls, the Court held that the shareholder was entitled to deduct his costs of the discontinued action from the sum recovered by the liquidator on the summons (*y*).

Costs of discontinued action for calls.

(*q*) See, on this subject, *ante*, pp. 1030 *et seq.* As to set-off against the assignee of a shareholder from whom calls are due, *ante*, pp. 1027–8.

(*r*) See 11 & 12 Vict. c. 45, § 61.

(*s*) *Ex parte Chippendale*, 4 De G. M. & G. 19.

(*t*) *Marylebone Joint Stock Banking Co.*, 25 L. J. Ch. 650, V.-C. K. See, too, *Ex parte Dayrell*, and *Ex parte Lowndes*, 1 Jur. N. S. 1129; *Ex parte Sedgwick*, 2 Jur. N. S. 949.

(*u*) *Marylebone Joint Stock Banking Co.*, 25 L. J. Ch. 650.

(*x*) See *The General Exchange Bank*, 4 Eq. 138; and see *ante*, p. 996, as to costs and debts becoming due from the company whilst in liquidation.

(*y*) *United Service Assoc.* [1901], 1 Ch. 97.

SECTION XV.—COSTS.

Costs of winding up.

The costs of winding up a company are usually so large, that the rules relating to their payment are of great practical importance. In fact, it is by no means an uncommon circumstance for contributories to have heavier calls made upon them for the payment of costs than for all other purposes put together (*z*). In considering the question of costs, the first point to determine is, what costs are payable by the company, and the next is, how and by whom such costs are to be paid.

First, as to the costs payable by the company.

Costs of actions commenced before the winding up.

The circumstances under which the costs of litigation with the company commenced prior to the winding up can be proved for in the winding up have been already noticed (*a*). If a liquidator adopts and continues an action brought by the company before the commencement of the winding up, the Court may, if the action fails, order the company to pay the defendants' costs in full (*b*). But the Court cannot order the costs of an action brought by shareholders for the benefit of the company before the commencement of the winding up, and subsequently dismissed by consent, to be paid out of the company's assets (*c*).

Costs of petition.

The costs of the petition for winding up a company have been already alluded to (*ante*, pp. 889 and 890).

Costs of proceedings subsequent to the winding-up order.

The costs of the proceedings subsequent to the winding-up order may be divided into two classes, according as they are or are not incurred in litigation. The non-litigious expenses are borne by the company, unless otherwise directed by the judge acting in the winding up (*d*). But provision is

(*z*) The power of the taxing-master to disallow costs has been much increased by R. S. C. Order LXV., r. 27 (38a). As to taxation, see *infra*, p. 1168.

(*a*) See *ante*, p. 1008.

(*b*) *London Drapery Stores* [1898], 2 Ch. 685. See, too, *Boynton* v. *Boynton*, 4 App. Ca. 733.

(*c*) *Hull Central Drapery Co.*, 15 Ch. D. 326. As to the position where the liquidator discontinues an action, see *United Service Assoc.* [1901], 1 Ch. 97.

(*d*) In *Ex parte Hardinge*, 1 N. R. 40, it was held that the official manager of a company was not entitled to costs incurred under an order made by a Court having no jurisdiction. Compare *Arthur Average Association*, 3 Ch. D. 522.

made against burdening the company with the costs of persons who, for their own better protection, desire to attend the winding-up proceedings; they can only do so at their own expense, and if their attendance causes extra expense to the company, such expense may be thrown upon them (*e*). A person who wishes to be allowed his costs incident to any proceeding in the winding up, should apply for them at the time; if he subsequently applies for them, he must give notice to the Official Receiver and to the liquidator, if one has been appointed, and he will not be allowed the costs of his application, unless the Court is satisfied it could not have been made at the time of the proceeding (*f*).

Applications for costs.

If the Court orders delinquent directors to be prosecuted, it may order the costs to be borne by the company (*g*).

Costs of prosecution.

The litigious expenses (or costs in the usual sense of the word) are in the discretion of the Judge. This discretion, however, is not to be exercised arbitrarily; and where there are no reasons to the contrary, the costs incurred by any particular litigation must be borne by the unsuccessful party (*h*). This rule has been held to apply to appeals (*i*). The rule, moreover, applies as well in favour of as against the company, and not only in cases of litigation between the company and its contributories, but also in those between it and non-contributories, or between different classes of contributories disagreeing amongst themselves. For example, if a contributory applies unsuccessfully to be removed from the list (*k*), or unsuccessfully resists being put on it (*l*), or applies unsuccessfully to have another person put on (*m*), or appeals unsuccessfully

General rules.

(*e*) See Rules, 1890, r. 173.

(*f*) Ib. r. 26.

(*g*) See Comp. Act, 1862, § 167.

(*h*) See *Ex parte Barry's representatives*, 2 Dr. & Sm. 321; *Ex parte Oakes and Peek*, 3 Eq. 633, 634. See, as to costs in the old Stannary Courts, *Ex parte Palmer*, 7 Ch. 286.

(*i*) *Ex parte Hall*, 1 De G. M. & G. 1. But see *Sichell's case*, 3 Ch. 119.

(*k*) Examples of this are very numerous. See, amongst others, *Isaacs' case* [1892], 2 Ch. p. 165; *Ex parte Oakes and Peek*, 3 Eq. 633, 634; *Ex parte Sichell*, 1 Sim. N. S. 187; *Reaveley's case*, 1 De G. & S. 550; *Bernard's case*, 5 ib. 283; and as to appeals, *Ex parte Mansfield*, 2 Mac. & G. 57; *Lawes's case*, 1 De G. M. & G. 421; *Straffon's Executors' case*, ib. 576; *Gibson's case*, 2 De G. & J. 275.

(*l*) *Ex parte Barry's representatives*, 2 Dr. & Sm. 321; *Gower's case*, 6 Eq. 77.

(*m*) *Bugg's case*, 2 Dr. & Sm. 452.

against an order making, or refusing to make, a call (*n*), or if he moves unsuccessfully to discharge the winding-up order (*o*), or to disturb a compromise made with other contributories (*p*), or if a person claiming to be a creditor appeals unsuccessfully against a disallowance of his debt (*q*); in all these and similar cases the motion or the appeal will, as a rule, be dismissed with costs.

Costs against liquidator.

So where the liquidator, on the part of the company, unsuccessfully appeals against an order excluding a person from the list of contributories (*r*), or unsuccessfully resists an appeal by a person put on the list, and seeking to have his name removed from it (*s*), or an appeal against an order for a call (*t*), or an appeal against the disallowance of a creditor's demand (*u*), or an appeal against an order excluding a contributory from attendance before the Judge acting in the winding up (*x*), or an appeal against an order for the delivery up of documents (*y*); in these and similar cases the liquidator, as a rule, is either ordered to pay the costs, reimbursing himself from the assets of the company (*z*); or to pay the costs out of the assets (*a*). As a rule, the order will be in the latter form

(*n*) *Ex parte Cropper*, 1 De G. M. & G. 147; *Ex parte Chippendale*, 4 ib. 19; *Londesborough's case*, ib. 411; *Ex parte Woolmer*, 2 ib. 665.

(*o*) *Ex parte Woolmer*, 5 De G. & S. 117, and 2 De G. M. & G. 665; *Clarke's case*, 1 K. & J. 22.

(*p*) *Lucy's case*, 4 De G. M. & G. 356.

(*q*) *Ex parte Lloyd*, 1 Sim. N. S. 248; *Wryghte's case*, 2 De G. M. & G. 636.

(*r*) As in *Maudslay & Field's case*, 17 Sim. 157; *Capper's case*, 1 Sim. N. S. 178; *Conway's case*, 5 De G. & S. 150; *Holme's case*, 4 ib. 312, and 2 De G. M. & G. 113; *Ex parte Beardshaw*, 1 Drew. 226; *Ex parte Roberts*, ib. 204; *Brockwell's case*, 4 ib. 205; *Nicol's case*, 3 De G. & J. 387.

(*s*) As in *Roberts' case*, 3 De G. & S. 205, and 2 Mac. & G. 192; *Mathew's case*, 3 De G. & S. 234; *Mainwaring's case*, 2 De G. M. & G. 66.

(*t*) As in *Upfill's case*, 1 Sim. N. S. 395; *Hunter's case*, ib. 435; *Mowatt and Elliott's case*, 3 De G. M. & G. 254.

(*u*) *Croxton's case*, 5 De G. & S. 432.

(*x*) *Ex parte Slatter's executors*, 5 De G. & S. 34.

(*y*) *Pell's case*, 3 De G. & S. 170.

(*z*) *Dominion of Canada Plumbago Co.*, 27 Ch. D. 33; *Campbell's case*, 4 Ch. D. p. 475; *Ferrao's case*, 9 Ch. 355; *Sichell's case*, 3 Ch. p. 124; and compare in bankruptcy, *Ex parte Angerstein*, 9 Ch. 479; *Pitts* v. *La Fontaine*, 6 App. Ca. 482.

(*a* *Smallpage's case*, 30 Ch. D. p. 604; *Dronfield Silkstone Coal Co.*, 23 Ch. D. 511; *Home Investment Soc.*, 14 Ch. D. 167; *Ex parte*

when the liquidator is defendant or respondent, and is not guilty of misconduct (*b*).

Representative cases.

However, where the case of one individual is selected to represent that of a class, the general rule is not to make him pay the costs even if he fails; and sometimes the company is ordered to pay them (*c*), but not as between solicitor and client (*d*).

No order as to costs.

But although the general rule is as above stated, its application is far from being universal. It frequently happens, that no order whatever is made as to costs, except that those of the liquidator are to be borne by the company. It is very difficult to lay down any general rules which can be relied upon as guides, in cases where so much is left to the discretion of the Judge; all that can be said is that there are cases in which a person has not been made to pay costs, where he has unsuccessfully resisted being made a contributory under circumstances of considerable hardship (*e*); where he has been induced to take shares by misrepresentation or fraud (*f*); where the law applicable to his case has been doubtful (*g*); where he has been made a contributory on the authority of a recent decision, followed with reluctance (*h*); where the Judge acting in the winding up has at different times taken different

Bartley, 12 Ch. D. p. 857; and compare in bankruptcy, *Ex parte Leicestershire Banking Co.*, 14 Q. B. D. 48; *Ex parte Stapleton*, 10 Ch. D. 586.

(*b*) *Salisbury, Jones, and Dale's case* [1895], 1 Ch. 333, overruling *Staffordshire Gas and Coke Co.* [1893], 3 Ch. 523, on this point.

(*c*) See *Taylor, Phillips, and Rickards' cases* [1897], 1 Ch. p. 310; *Walton* v. *Edge*, 10 App. Ca. p. 44; *Tosh* v. *North British Building Soc.*, 11 App. Ca. p. 508; *Ex parte Jeaffreson*, 11 Eq. 116; *Walker's case*, 2 Eq. 554. But see *contra*, *Ex parte Walton*, and *Ex parte Hue*, 3 Jur. N. S. 853.

(*d*) *Grimwade* v. *Mutual Society*, 18 Ch. D. 530; but see *contra*, *Part's case*, 10 Eq. p. 629, and *Birch* v. *Cropper*, 14 App. Ca. 549, where there was a large surplus profit. See generally as to this, *Andrews* v. *Barnes*, 39 Ch. D. 133.

(*e*) As in *Crosfield's case*, 4 De G. & S. 338, and 2 De G. M. & G. 128; *Chartres' case*, 1 De G. & S. 581; *Richmond's Executors' case*, 3 ib. 96; but see *Ex parte Oakes and Peek*, 3 Eq. 633, 634.

(*f*) *Dodgson's case*, 3 De G. & S. 85; *Parbury's case*, ib. 43. But see *Hitchcock's case*, ib. 92, and *Gibson's case*, 2 De G. & J. 275; and *Ex parte Oakes and Peek*, 3 Eq. 633, 634.

(*g*) As in *Angas's case*, 1 De G. & S. 560; *Kluht's case*, 3 ib. 210.

(*h*) As in *Hole's case*, 3 De G. & S. 241; *Ex parte Brittain*, 1 Sim. N. S. 281. But see *Ex parte Sichell*, ib. 187, and *Markwell's case*, 5 De G. & S. 528.

views of a contributory's liability (*i*), or has decided in favour of the contributory (*k*); where a director has succeeded in getting himself struck off the list on which he would not have been put, had it not been for his own ambiguous conduct (*l*); in other hard or doubtful cases, and where one side has been as much in fault as the other (*m*).

Payment of costs by liquidator.

All costs properly incurred by the liquidator are defrayed out of the assets of the company, and if necessary by calls on its contributories (*n*). Even where the liquidator is a party to some proceeding, the costs of which he is ordered to pay personally, his right to be indemnified by the company is not necessarily taken away by such order (*o*). But there can be no doubt of the power of the Court to order a liquidator to pay out of his own pocket, and without recourse to the company, any costs, charges, or expenses improperly incurred by him in winding up the company (*p*); and on more than one occasion, the liquidator has been made to bear his own costs (*q*). It has, however, been said that the liquidator cannot be ordered personally to pay the costs incurred by his having improperly summoned a person as a contributory (*r*). In those cases in which no costs are given, or in which the costs of the liquidator are not otherwise provided for, his costs are borne by the company, unless the contrary is ordered.

(*i*) As in *Stanhope's case*, 3 De G. & S. 198.

(*k*) As in *Bird's case*, 1 Sim. N. S. 47; *Holt's case*, ib. 389; *Keene's Executors' case*, 3 De G. M. & G. 272; *Woollaston's case*, 5 Jur. N. S. 617, and 4 De G. & J. 437.

(*l*) As in *Cockburn's case*, 4 De G. & S. 177; *Sharp and James's case*, 1 De G. M. & G. 565.

(*m*) See *Worcester Corn Exchange Co.*, 3 De G. M. & G. 180; *Talbot's case*, 5 De G. & S. 386; *Preece and Evans's case*, 2 De G. M. & G. 374.

(*n*) As to calls for remuneration for work to be done, see the *Marylebone Bank*, 18 Jur. 281. As to taxation of liquidator's costs, see *Re East Holyford Mining Co.*, Ir. Rep. 10 Eq. 361.

(*o*) *Grand Trunk Rail. Co.* v. *Brodie*, 3 De G. M. & G. 146. See *ante*, pp. 1162, 1163, notes (*z*), (*a*), and (*b*).

(*p*) See *Ex parte Roberts*, 1 Drew. 204. This is a reason for not ordering him to give security for costs. *W. Powell and Sons* [1896], 1 Ch. 681; *Western Counties, &c., Milling Co.* [1897], 1 Ch. p. 620.

(*q*) *Silver Valley Mines*, 21 Ch. D. 381; *Clifton's case*, 5 De G. M. & G. 743; *Ex parte A'Beckett*, 2 Jur. N. S. 684, where the O. M. had not kept proper books.

(*r*) *Ex parte Marsh*, 1 Mac. & G. 302. The Official Receiver is not personally liable for the costs of an appeal from his decision rejecting a proof, Rules, 1890, r. 121.

Costs of appeals.

As regards appeals, an appeal will lie against an order refusing to give the liquidator his costs out of the assets of the company (*s*). If a liquidator unsuccessfully supports an order appealed from, he gets his costs out of the assets of the company, but if he unsuccessfully appeals and is ordered to pay costs, the Court of Appeal usually leaves it to the Judge having the conduct of the winding up to determine how those costs are to be borne (*t*). It is not necessary for the liquidator to obtain leave to appeal, but unless he does so, he incurs considerable risk of losing his costs if he is unsuccessful (*u*).

Costs of creditors' representatives.

A creditors' representative appointed under the Winding-up Amendment Act of 1857, was entitled to his costs out of the assets of the company (*x*).

The office of creditors' representative is abolished, but it is apprehended that the Court still has power to appoint persons to represent either creditors or contributories (*y*), and the costs of such persons are usually paid by the company even when there is no adverse interest between them and the liquidator (*z*). But other individuals who choose to appear upon questions not directly concerning them, must do so at their own expense (*a*).

(*s*) *Silver Valley Mines*, 21 Ch. D. 381. An appeal will lie from the County Court to the Divisional Court in such a case. *Raynes Park Golf Club* [1899], 1 Q. B. 961.

(*t*) See *Silver Valley Mines*, 21 Ch. D. 381; *Robinson's case*, 4 Ch. 335; *Stringer's case*, ib. 493. See *National Savings Bank Association*, 1 Ch. 554. See, also, *Westcomb's case*, 9 Ch. 553, where the liquidator was a respondent and was left to apply to the judge for his costs.

(*u*) *Silver Valley Mines*, 21 Ch. D. 381. He will be allowed the costs of an application for leave to appeal unless the application is frivolous, ib. See, also, *City and County Investment Co.*, 13 Ch. D. 475.

(*x*) See *Budd's case*, 3 De G. F. & J. 297; *Hatton's case*, 10 W. R. 313; *Ex parte Finlay & Co.*, 27 L. J. Ch. 658; and see *McIver's claim*, 5 Ch. 427. As to his costs when he supported the official manager, see *per* V.-C. Wood, in *Hatton's case*, 10 W. R. 313; *Hoare's case*, ib. 381; and *Re Saxon Life Assurance Society*, 2 J. & H. 408; *Burges and Stock's case*, 2 J. & H. 441. As to his costs of attending the settlement of the list of contributories, *Mexican and South American Mining Co.*, 26 Beav. 172; *Alabaster's case*, 7 Eq. 285.

(*y*) See *ante*, p. 1036, note (*i*).

(*z*) See *Ex parte Oakes and Peek*, 3 Eq. 634.

(*a*) Ib. and Rules, 1890, r. 173, noticed, *ante*, p. 1161.

Secondly, as to the payment of the costs payable by the company.

Calls for costs.

The costs which have to be borne by the company, or are payable out of its estate, are discharged by the liquidator out of the assets of the company in his hands, if he has sufficient for the purpose, and if not, then by calls on the contributories (*b*).

In the event of the assets being insufficient to satisfy the liabilities, the Court may make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding it up, in such order of priority as the Court thinks just (*c*).

Costs paid in full not proved.

Costs ordered to be paid by the company in the course of the winding up are not like debts on which a dividend only can be paid if there is a deficiency in assets, but are payable in full out of the assets if there are any (*d*).

Order in which costs, &c., are paid.

The order in which the costs and expenses of the winding up are to be paid out of the assets of the company is now regulated by the Companies (Winding-up) Rules, 1890 (*e*). These Rules provide that the assets of the company remaining after payment of fees and actual expenses incurred in realising or getting in the assets (*f*), shall, subject to any order of the Court (*g*), be applied in the following order (*h*): the taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court (*h*); next the remuneration of the special manager (if any) (*i*); next, the costs and expenses of any person who makes, or concurs

(*b*) See, as to calls for costs, The Companies Act, 1862, §§ 38, 102.

(*c*) Ib. § 110. And Rules, 1890, r. 31, and *London Metallurgical Co.* [1895], 1 Ch. 758; and under the old practice, *Dominion of Canada Plumbago Co.*, 23 Ch. D. 511.

(*d*) *London Metallurgical Co.* [1895], 1 Ch. 758; *Home Investment Soc.*, 14 Ch. D. 167; *Madrid Bank* v. *Pelly*, 7 Eq. 442; *Bailey and Leetham's case*, 8 Eq. 94. See, also, *Ex parte Clark*, 7 Eq. 550; *Ex parte Smith*, 3 Ch. 125; *National Building Land Co.*, 15 L. R., Ir. 47.

(*e*) Rule 31.

(*f*) Even before this rule the costs of realisation came first. See *London Metallurgical Co.* [1895], 1 Ch. p. 758; *Staffordshire Gas and Coke Co.* [1893], 3 Ch. 523.

(*g*) As to companies subject to the Stannaries Act, 1887, see 50 & 51 Vict. c. 43, §§ 9, 10, and 14.

(*h*) These costs also came first under the old practice. See *Audley Hall Cotton Spinning Co.*, 6 Eq. 245.

(*i*) See Act, 1890, § 5, and Rules, 1890, r. 42, and *ante*, p. 959.

in making, the company's statement of affairs (*k*); next, the taxed costs of any shorthand writer appointed to take an examination (*l*); next, the liquidator's necessary disbursements other than actual expenses of realisation; next, the costs of any person employed by the liquidator with the sanction of the committee of inspection (*m*); next, the remuneration of the liquidator (*n*); next, the actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Board of Trade.

Costs payable by liquidator to a successful litigant.

It will be observed that this rule makes no mention of the costs which the liquidator has been ordered to pay to a successful litigant. They are left to be dealt with by the order of the Court, and are payable in the same order as under the old practice, viz., next after the costs of the petition (*n*). A successful litigant, whose costs the liquidator has been ordered to pay out of the company's assets, is *primâ facie* entitled to be paid immediately; the *onus* is on the liquidator to show that immediate payment cannot be made. If he shows that other persons have a prior right to, or are entitled *pari passu* with the litigant, no order for payment will be made without providing for their claims (*o*). As between successful litigants whose costs have been ordered to be paid out of the assets, the date of the order gives no priority; but payment will not be indefinitely postponed until all claims have come in (*p*).

Assets subject to incumbrances.

This order of payment is not applicable to assets which are mortgaged or charged; to the extent of the mortgage or

(*k*) See *ante*, pp. 957, 958.

(*l*) If the shorthand writer is appointed at the instance of the Official Receiver, the costs of his notes are to be treated as an expense incurred by the Official Receiver in realising the assets, see Rules, 1890, r. 31. As to the employment of a shorthand writer, see r. 16.

(*m*) As to the employment of a solicitor or agent, see Act, 1890, § 12 (4), and *ante*, pp. 971, 972.

(*n*) *London Metallurgical Co.* [1895], 1 Ch. 758; *Staffordshire Gas and Coke Co.* [1893], 3 Ch. 523. This is so whether the liquidator is ordered to pay the costs out of the company's assets, *Home Investment Society*, 14 Ch. D. 167, or to pay them himself with liberty to recoup himself out of the assets, *Dominion of Canada Plumbago Co.*, 27 Ch. D. 33, overruling *Dronfield Silkstone Coal Co.*, 23 Ch. D. 511.

(*o*) *London Metallurgical Co.* [1895], 1 Ch. 758, following *Home Investment Soc.*, 14 Ch. D. 167, and *Dominion of Canada Plumbago Co.*, 27 Ch. D. 33.

(*p*) *London Metallurgical Co.* [1895], 1 Ch. 758, and *Ex parte Percival*, 6 Eq. 519.

charge such assets belong to the mortgagee, and do not form part of the assets of the company. Such assets are not liable, as against the mortgagee, to the general costs of the winding up or to any costs not incurred for his benefit (*q*): his principal, interest, and costs must be paid out of the mortgaged property in priority even to costs incurred by the liquidator in carrying on the company's business with a view to increase its assets, and thereby to benefit its creditors generally (*r*); but if the liquidator realises the security, his costs of realisation are a first charge on the fund produced (*s*).

Taxation of costs.

All costs payable by or to the Official Receiver or liquidator or out of the assets of the company are liable to taxation (*t*); the Official Receiver has a right to be present on the taxation and to be heard (*tt*). No payments in respect of bills or charges of solicitors, managers, or other persons may be allowed out of such assets without proof that they have been taxed or allowed by the registrar (*u*). In winding-up proceedings in the High Court the costs may be taxed by the registrar (*x*).

Calls for costs.

A call for costs may, if necessary, be made before all the assets are got in (*y*), and before the exact amount of the costs payable has been ascertained by taxation (*z*); and a call for

(*q*) See *Oriental Hotels Co.*, 12 Eq. 126, and *Strapp* v. *Bull, Sons, & Co.* [1895], 2 Ch. 1, where the circumstances were special.

(*r*) *Ex parte Grissell*, 3 Ch. D. 411, and compare *Marine Mansions Co.*, 4 Eq. p. 611. Where part of the assets have been severed from the rest to meet a particular claim, see *Cook's claim* (2), 18 Eq. 655.

(*s*) See the cases in the last two notes, and as to the costs of proceedings for misfeasance, or of getting in calls when the sums recovered belong to the debenture holders, see *Anglo-Austrian Printing, &c., Union* [1895], 2 Ch. 891; and *Fowler* v. *Broad's Patent Night Light Co.* [1893], 1 Ch. 724. See, too, *In re Carl Hirth* [1899], 1 Q. B. pp. 623, 624. As to the order in which costs, &c., incurred in a debenture holder's action are payable, see *Batten* v. *Wedgewood Coal Co.*, 28 Ch. D. 317, and *ante*, p. 339.

(*t*) As to the taxation of such costs, see Rules, 1890, rr. 22-30, and the forms there referred to. As to the costs of a misfeasance summons under § 10 of the Act of 1890, see *Anglo-Austrian Printing, &c., Union* [1894], 2 Ch. 622.

(*tt*) Rules, 1890, r. 25; *Re Nash & Sons* [1896], 1 Q. B. pp. 18, 19.

(*u*) Rules, 1892, r. 28.

(*x*) Rules, August, 1892, r. 2. As to the right of the Board of Trade to have a taxation in other Courts reviewed, see Rules, 1890, r. 30.

(*y*) *Gay's case*, 1 De G. M. & G. 347, and 2 De G. & S. 122.

(*z*) *Dale's case*, 1 De G. M. & G. 513; *Ex parte Woolmer*, 2 ib. 665. Compare *Marylebone Bank*, 18 Jur. 281.

costs is *primâ facie* payable, by those liable to it, in proportion to the number of shares held by them respectively (*a*).

The right to have a call made for payment of costs may be lost by laches (*b*).

On whom call to be made.

But a call for costs, like a call for debts, is only to be made on those liable to pay it (*c*). Therefore, where in winding up an abortive company, costs had been incurred, for which a call was made on all the contributories, before their liabilities to the debts of the company had been ascertained, it was held that this call was wrongly made (*d*). It is, therefore, the duty of the liquidator in the winding up, to ascertain to what costs each contributory or set of contributories is liable, and to make the call for their liquidation accordingly. It is, however, to be observed, that where costs have been incurred in proceedings, taken for the benefit of all the contributories as a body, they are all rateably chargeable with the costs of those proceedings although they may have been taken unsuccessfully, and although some of the contributories may have already paid more than others towards the discharge of the company's debts (*e*). Any temporary injustice resulting from this last circumstance must be set right afterwards (*f*).

Costs not payable out of funds of company to prejudice of creditors.

In winding up Insurance companies, the policies of which are payable out of the funds of the company, it has been held that the costs of realising those funds are not deducted from them, but are treated like all the other costs of winding up; *i.e.*, they must be defrayed by calls on the contributories (*g*).

Past members.

The liability of past members for calls in respect of costs, turns, as regards companies formed and registered under the

(*a*) *Ex parte Woolmer*, 2 De G. M. & G. 665.

(*b*) See *Ex parte A'Beckett*, 2 Jur. N. S. 684.

(*c*) *Hunter's case*, 1 Sim. N. S. 435.

(*d*) Ib. See, too, *Gay's case*, 5 De G. & S. 122; *Marylebone Bank*, 18 Jur. 281.

(*e*) *Preece and Evans' case*, 2 De G. M. & G. 374, *Ex parte Woolmer*, ib. 665; *Gay's case*, 5 De G. & S. 122, and 1 De G. M. & G. 347.

(*f*) Ib.

(*g*) *Professional Life Ass. Co.*, 3 Ch. 167; *Agriculturist Cattle Ins. Co.*, 10 Ch. 1. See, further, *Accidental Death Ins. Co.*, 7 Ch. D. 568. But *qu.* whether in *Professional Life Ass. Co.*, Rolt, L. J., meant to lay down a general rule that the costs of realisation were to be so treated, see 3 Ch. p. 175; see, also, *West London, &c., Building Society* [1894], 2 Ch. 353.

Companies Act, 1862, on the true construction of the early part of § 38, taken in connection with the second and third clauses of the same section (*h*). The early part of § 38 renders past members liable for costs; and the second and third clauses apparently do not exempt them therefrom. As regards companies registered, but not formed under the Act (*i*), and as regards unregistered companies (*k*), the provisions of the Act are very imperfect, and at present there are no decisions on them.

Brett's case.

As regards companies formed and registered under the Companies Act, 1862, it was settled in *Brett's case* (*l*), that if there are no debts in respect of which a past member can be made a contributory, no calls can be made upon him for any costs. But if there are any such debts a call for some costs may be made on him; but only apparently for costs incurred in settling the list of past members, and of adjusting such equities *inter se* as may require adjustment (*m*). At the same time, whatever sum is raised by a call on a past member is applicable to pay all debts and costs for which the company is liable.

SECTION XVI.—DISTRIBUTION OF SURPLUS ASSETS, AND FINAL DISSOLUTION OF THE COMPANY.

Distribution of surplus.

After the debts, liabilities, and losses of the company have been paid, discharged, and made good, and provision has been made to meet future contingent claims (*n*), and the cross claims between the contributories have been settled, and the costs of winding up have been paid or provided for, there remains but to distribute the surplus assets of the company, if any there be (*o*). The cases in which any surplus is left are rare, but

(*h*) See, also, §§ 75, 110, 196, cl. 5, 200, and as to voluntary winding up § 144.

(*i*) See § 196, cl. 5.

(*k*) See § 200.

(*l*) 8 Ch. 800, and 6 ib. 800. See *ante*, p. 1157.

(*m*) See 8 Ch. 808 *et seq.*, and *Marsh's case*, 13 Eq. 388.

(*n*) *Gooch* v. *London Banking Association*, 32 Ch. D. 41; *Lord Elphinstone* v. *Monkland Iron Co.*, 11 App. Ca. 332.

(*o*) Companies Act, 1862, § 109. See as to a voluntary society not governed by the Companies Acts, *Brown* v. *Dale*, 9 Ch. D. 78.

the possibility of there being a surplus, shows that a person *may* be prejudiced by being excluded from the list of contributories, although, in point of fact, those who are so excluded seldom have reason to complain. A person, however, upon whom calls can be made, will not be allowed to remain on the list so long as he thinks it will be for his benefit to continue there, and then insist on his name being removed when he begins to apprehend that it will be to his prejudice (*p*).

Meaning of "surplus assets."

The expression "surplus assets" is ambiguous, and when used in articles of association may mean either the surplus remaining after payment of the debts and liabilities of the company and the costs of the winding up, or the surplus remaining after payment of these debts, liabilities, and costs, and after recouping the paid-up capital subscribed by the shareholders (*q*).

Surplus may not be profit.

Although there may be surplus assets to be divided, it by no means follows that the company has made any profit. If the surplus is not sufficient to return to the shareholders the amount of capital paid up by them, there has been a loss; and the question to be decided in distributing the surplus is then how that loss is to be borne. If, on the other hand, the surplus is more than sufficient to return to each shareholder the capital paid up by him, there is a profit, and the question then is how the profits are to be shared.

Preference shareholders.

If there has been a loss, the holders of shares entitled to a preference only in respect of dividends payable out of profits are not as a rule entitled to any preference in respect of the surplus assets (*r*). If there has been a profit, the question is more difficult, and depends upon whether (according to the company's Act, charter, deed, or articles) the excess of the assets over the capital paid up, though profit in one sense, constitutes a fund divisible as profits amongst the holders of the preference shares.

(*p*) See *Underwood's case*, 5 De G. M. & G. 700, *per* Turner, L. J.

(*q*) See *New Transvaal Company* [1896], 2 Ch. 750, where it was held to have the latter meaning. See, too, as to the meaning of surplus assets, *Anglo-Continental Corp. of West. Australia* [1898], 1 Ch. 327.

(*r*) *London India Rubber Company*, 5 Eq. 519; *Griffiths* v. *Paget*, 6 Ch. D. 511. For an exception, see *infra*, p. 1173.

Bridgewater Navigation Company.

Thus in the *Bridgewater Navigation Co.* the articles of association provided for the issue of preference shares, and contained a clause that no dividends should be paid except out of the profits of the company arising from the business of the company as shown upon the balance sheet, which should from time to time have been examined and passed by the auditors. Shares were afterwards issued entitling the holders to a dividend of 5 per cent., taking precedence of all dividends and claims of the holders of ordinary shares. The company subsequently sold its business for a sum greatly in excess of what was needed to return the paid-up capital; the preference shareholders claimed to receive out of this excess a preferential dividend of 5 per cent., and to share the balance with the ordinary shareholders, while the ordinary shareholders contended that the preference shareholders were not entitled to receive anything out of this excess beyond a dividend of 5 per cent. It was held that under the articles of association the holders of preference shares were only entitled to a dividend of 5 per cent., and all other profits belonged to the ordinary shareholders, but that the profit arising from the compulsory sale was not profit in respect of which dividends might have been declared, and that the clauses relating to dividends were in no way applicable to the fund to be divided (*s*). The constitution of the company may, however, be such as to confer on some shareholders a preference as to capital, and not only as to dividends, and where this is the case the surplus assets must be applied accordingly (*t*).

Undrawn profits.

If, however, any part of the surplus assets consists of undrawn profits earned before the commencement of the winding up and not capitalised (*u*), it may be that this portion of the surplus is divisible in the same way as the profits of the company were divisible while it was a going concern, although the other portion is not; but whether this is so depends in each case upon the regulations of the company. Thus, in the

(*s*) *Bridgewater Navigation Co.*, 39 Ch. D. 1, affirmed on this point by the House of Lords *sub nom. Birch* v. *Cropper*, 14 App. Ca. 525.

(*t*) *Bangor* v. *Port Madoc Slate and Slab Co.*, 20 Eq. 59.

(*u*) As to capitalisation of profits, see *Bouch* v. *Sproule*, 12 App. Ca. 385, and *ante*, pp. 741 *et seq.*

case of the *Bridgewater Navigation Co.* above referred to, it was decided that certain reserve funds which had been formed by carrying over to them from time to time a portion of the company's profits which might have been distributed in dividends, belonged, subject to the payment of the preferential dividend up to the date of the winding up, exclusively to the ordinary shareholders (*x*). In another case it was held that this portion of the surplus was applicable to the payment of the arrears of dividend on preference shares which carried a fixed cumulative preferential dividend (*y*). If, however, on the true construction of the company's regulations, the preference shareholders can only claim their preference when dividends have been declared (*z*), or out of monies which have been made available for dividend (*a*), they will not be entitled to have arrears of dividend made good out of undrawn profits which might have been made, but in fact have not been made, available for dividend before the commencement of the winding up.

Undrawn profits, but loss of capital.

Moreover, although the surplus is not sufficient to repay to the shareholders the amount of capital paid up by them, the portion of surplus which represents undrawn profits may in some cases be divisible in the same way as the profits were divisible before the winding up, if the deficiency is caused by a loss properly attributable to capital (*b*); for, as has been seen, profits may in some cases be distributed as dividend, notwithstanding a loss of capital (*c*).

Costs a capital charge.

As between the persons entitled to undrawn profits and those entitled to the rest of the surplus, the costs of the winding up will be treated as a capital charge, to be borne by that part of the surplus which does not represent undrawn profits (*d*).

(*x*) [1891], 2 Ch. 317, varying the decision of North, J. [1891], 1 Ch. 155. This distinction between undrawn profits and accretions to capital may also be material when directors are remunerated by a percentage of profits, compare *Ex parte Kemp* [1894], 3 Ch. 690, with *Frames* v. *Bultfontein Mining Co.* [1891], 1 Ch. 140.

(*y*) *Bishop* v. *Smyrna and Cassaba Rail. Co.* [1895], 2 Ch. 265.

(*z*) *Odessa Waterworks Co.* [1901], 2 Ch. 190, note.

(*a*) *Crichton's Oil Co.* [1901], 2 Ch. 184.

(*b*) *Bishop* v. *Smyrna and Cassaba Rail. Co.* [1895], 2 Ch. 265.

(*c*) See *ante*, p. 600.

(*d*) *Bishop* v. *Smyrna and Cassaba Rail. Co.* [1895], 2 Ch. 265.

Undrawn profits, how ascertained.

In ascertaining the amount of undrawn profits in a winding up, regard must be had to actual values, and not to the estimated value put on the assets when the company was carrying on business (*e*); and if necessary for the proper adjustment of the accounts and the rights of the parties, the revenue account may be recouped out of capital (*f*). If, however, sums based upon estimates reasonable and proper at the time they were made have been set aside to be dealt with as profit, the Court will treat such sums as profit, though subsequent events have proved that the estimates were erroneous (*g*). Profits earned since the commencement of the winding up are treated as part of the general assets (*h*).

Surplus, how distributable.

In the absence of express agreement (*i*) or of any special provision in the company's regulations to the contrary (*k*), losses must be borne (*l*) and profits shared (*m*) by the shareholders in proportion to the nominal amount of their shares, and not in proportion to the amount paid up thereon (*n*); an express provision for the payment of dividends according to the

(*e*) *Bridgewater Navigation Co.* [1891], 2 Ch. pp. 328 *et seq.*; *Bishop* v. *Smyrna and Cassaba Rail. Co.* [1895], 2 Ch. 265.

(*f*) *Bishop* v. *Smyrna and Cassaba Rail. Co.* (No. 2) [1895], 2 Ch. 596.

(*g*) *Ex parte Kemp* [1894], 3 Ch. 690.

(*h*) *Bishop* v. *Smyrna and Cassaba Rail. Co.* (No. 2) [1895], 2 Ch. 596.

(*i*) As in *Eclipse Gold Mining Co.*, 17 Eq. 490, where new shares had been created and issued on special terms. See, also, *Holyford Mining Co.*, Ir. L. R. 3 Eq. 208.

(*k*) As in *Mutoscope and Biograph Syndicate* [1899], 1 Ch. 896, where the articles provided that if the surplus was more than sufficient to repay the capital paid up, the excess was to be divided according to the amount paid up. Compare *Anglo-Continental Corp. of West. Australia* [1898], 1 Ch. 327.

(*l*) *Ex parte Maude*, 6 Ch. 51; *Wakefield Rolling Stock Co.* [1892], 3 Ch. 165, where the shares were of different nominal amounts.

(*m*) *Birch* v. *Cropper*, 14 App. Ca. 525, reversing on this point *Bridgewater Navigation Co.*, 39 Ch. D. 1; *Driffield Gas Light Co.* [1898], 1 Ch. 451. *Sheppard* v. *Scinde, Punjaub and Delhi Rail. Co.*, 36 W. R. 1 (and affirmed by the House of Lords), and *Somes* v. *Currie*, 1 K. & J. 605, turned on special circumstances, see 14 App. Ca. pp. 531 & 542, and [1898], 1 Ch. p. 456.

(*n*) As to the construction of an article providing for division of assets in accordance with the amount paid up at the commencement of the winding up, see and compare *Mutoscope and Biograph Syndicate* [1899], 1 Ch. 896, where there was a profit, and *Anglo-Continental Corp. of West. Australia* [1898], 1 Ch. 327, where there was a loss.

amount paid up on the shares is not alone sufficient to prevent the application of this rule in the distribution of the company's surplus assets (*o*). If, therefore, some of the shareholders have paid up more in proportion to the nominal amount of their shares than others, the amounts paid up by the shareholders must first be adjusted until all have paid up the same proportion, then the surplus must be distributed between them in proportion to the nominal amount of their shares (*p*). The adjustment may be made either by returning to shareholders who have paid up more in proportion than others the excess so paid by them (*q*), or by making a call on the shareholders who have paid less in proportion than the others (*r*).

Shares issued at a discount.

In the absence of any estoppel between the company and the particular shareholder (*s*), shares in a limited company governed by the Companies Act, 1862, which have been issued at a discount will be treated in adjusting the rights of the shareholders *inter se* as unpaid to the extent of the discount (*t*), and shares issued as fully paid up without any consideration will be treated as unpaid (*u*). It is doubtful whether shares issued before the Companies Act, 1900, came into operation, and paid for otherwise than in cash without any contract having been filed in accordance with the requirements of § 25 of the Companies Act, 1867, can now be treated as paid up in full so as to entitle the holders to share in the surplus assets on that footing (*x*).

Shares issued as paid up.

(*o*) See cases in note (*m*) *ante*.

(*p*) See *Driffield Gas Light Co.* [1898], 1 Ch. 451; and where the shares are of different nominal amounts, *Wakefield Rolling Stock Co.* [1892], 3 Ch. 165. See, too, the other cases in notes (*l*) (*m*) and the two next notes.

(*q*) As in *Ex parte Maude*, 6 Ch. 51; *Scinde, Punjaub, and Delhi Corporation*, 6 Ch. 53, note; *Weymouth and Channel Islands Steam Packet Co.* [1891], 1 Ch. 66; *Wakefield Rolling Stock Co.* [1892], 3 Ch. 165; *Birch* v. *Cropper*, 14 App. Ca. 525; *Driffield Gas Light Co.* [1898], 1 Ch. 451. See, also, *Newtownards Gas Co.*, 15 L. R. Ir. 51.

(*r*) As in *Anglesea Colliery Co.*, 1 Ch. 555 and 2 Eq. 379; *Crookhaven Mining Co.*, 3 Eq. 69; *Welton* v. *Saffery* [1897], A. C. 299; *Anglo-Continental Corp. of West. Australia* [1898], 1 Ch. 327.

(*s*) See *ante*, p. 1079.

(*t*) *Welton* v. *Saffery* [1897], A. C. 299; *Weymouth and Channel Islands Steam Packet Co.* [1891], 1 Ch. 66.

(*u*) See *Eddystone Marine Ins. Co.* [1893], 3 Ch. 9.

(*x*) See *ante*, pp. 566, 567.

Amounts paid in advance of calls.

If the company has treated the amount paid up by some shareholders in excess of others, as an advance to it, upon which it has been paying interest, these shareholders will be entitled to a return of this advance with interest up to the date of repayment before the other shareholders receive anything, and the surplus remaining will be divided between the shareholders in the manner above explained (*y*).

Building societies.

The questions which arise in connection with distribution of assets in the winding up of benefit, building, and mutual loan societies will be noticed hereafter (*z*).

Dissolution of the Company.

Order dissolving company.

When the affairs of the company have been completely wound up, the Court is required to make an order dissolving the company as from the date of the order (*a*); and notice of this order is forthwith to be given by the liquidator to the registrar of joint-stock companies, who is required to make a minute in his books of the company's dissolution (*b*).

The order dissolves the company (*c*).

Books of company.

The books of the company are to be disposed of as the Court may direct (*d*).

Effect of dissolution.

A dissolution by an order of the Court is, in the absence of any allegation of fraud, a bar to an action by a creditor against the directors to make them liable for dividends improperly paid (*e*). The dissolution of the company, like the death of an individual, revokes the authority of its agents (*f*). On the

(*y*) *Wakefield Rolling Stock Co.* [1892], 3 Ch. 165; *Exchange Drapery Co.*, 38 Ch. D. 171. They could not claim interest after the winding up against creditors.

(*z*) See *infra*, pp. 1242 *et seq.* In the case of a trades union, see *Printers and Transferrers, &c., Society* [1899], 2 Ch. 184.

(*a*) Comp. Act, 1862, § 111. *Semble*, this section applies to any company which the Court has jurisdiction to wind up, see *Bradford Navigation Co.*, 10 Eq. p. 341, except foreign companies, as to which see *ante*, p. 840.

(*b*) §§ 112 and 113.

(*c*) § 111. In the case of a voluntary winding up, see § 143 and *infra*, p. 1192, and the cases there cited as to the jurisdiction of the Court over dissolved companies.

(*d*) § 155. As to the liability of a liquidator to produce the books in an action to which he is a party, see *London and Yorkshire Bank* v. *Cooper*, 15 Q. B. D. 473.

(*e*) *Coxon* v. *Gorst* [1891], 2 Ch. 73.

(*f*) *Salton* v. *New Beeston Cycle Co.* [1900], 1 Ch. 43.

dissolution of an incorporated company, any personal property to which it is entitled passes to the Crown as *bona vacantia* (*g*).

Defunct companies.

In addition to the usual method of dissolving a company on the winding up by an order of Court, power has been given to the registrar of joint-stock companies, after giving certain prescribed notices, to strike the names of defunct companies off the register, whether they are being wound up or not (*h*), and by so doing to dissolve them. But any company, or any member or creditor (*i*) thereof who feels aggrieved by the name being struck off may apply to the Court (*k*), and the Court, if satisfied that the company was, at the time of the striking off, carrying on business, or that it is just so to do, may order the name of the company to be restored to the register (*l*), and thereupon the company shall be deemed to have continued in existence as if the name thereof had not been struck off.

Release of liquidator.

As to the release of the liquidator, see *ante*, p. 984.

(*g*) *Higginson* v. *Dean* [1899], 1 Q. B. 325. *Qu.* if debts owing to the company, and mere *choses en action*, pass to the Crown; see ib., and cases there cited. In the case of an unincorporated friendly society when all the members are dead, see *Cunnack* v. *Edwards* [1896], 2 Ch. 679.

(*h*) Comp. Act, 1880, § 7, amended and extended by the Comp. Act, 1900, § 26.

(*i*) Before the Act of 1900, § 26, the creditor's only remedy was to present a petition to have the company wound up, see *Anglo-American Exploration, &c., Co.* [1898], 1 Ch. 100. See, too, *Re Born* [1900], 2 Ch. p. 434.

(*k*) This jurisdiction can be exercised either by any judge in the Chancery Division, or by the judge who has jurisdiction to wind up the company, see *Chaco (Paraguay) Land Co.*, W. N. 1901, p. 124; *City Lands Investment Corp.*, W. N. 1897, p. 162.

(*l*) See *Outlay Assurance Soc.*, 34 Ch. D. 479.

CHAPTER II.

OF WINDING UP VOLUNTARILY, AND SUBJECT TO THE SUPERVISION OF THE COURT.

SECTION I.—DIFFERENCES BETWEEN THE VARIOUS METHODS OF WINDING UP.

Bk. IV. Chap. 2. Sect. 1.

Winding up voluntarily and subject to supervision.

THE Companies Act, 1862 (following in this respect the Acts of 1856—58), provides for two other methods of winding up in addition to a winding up by the Court, viz., 1st, purely voluntarily, that is, without the intervention of the Court at all, and 2dly, voluntarily, but at the same time under an order and subject to the supervision of the Court.

Differences between these and compulsory winding up.

Under the former practice the main difference between these two methods on the one hand, and winding up by the Court on the other, arose from the fact that when a company was wound up by the Court, everything was done under the immediate superintendence of the chief clerk of the judge to whose Court the winding up was attached, a procedure which necessarily involved considerable delay and expense even in matters of routine; but that when a company was wound up voluntarily, or subject to the supervision of the Court, all the business was done by the liquidator, without consulting the judge or his chief clerk, who were only appealed to on matters of difficulty or for the purpose of exercising powers which the liquidator did not possess (*a*). This difference still exists in a minor degree under the present practice, but it is no longer the main difference. The main difference now is that, with a few exceptions (*b*), the new machinery introduced into the winding up of companies by the Companies (Winding-up) Act,

(*a*) See the judgment of V.-C. Wood, in the *Inns of Court Hotel Co.*, W. N. 1866, 348. But see the observations of L. J. Turner, as to the expense of voluntary liquidations in *National Savings Bank Association*, 1 Ch. p. 553.

(*b*) §§ 10, 14, and 15. See as to § 10, *ante*, pp. 940 *et seq.*; as to § 14, *ante*, p. 860; as to § 15, *ante*, pp. 946 *et seq.*

1890, is not applicable to companies which are being wound up voluntarily or subject to the supervision of the Court (*c*). Consequently the winding up of such companies is not under the control of the Board of Trade or of the Official Receiver, and what is more important, the powers of investigation conferred upon the Official Receiver and the Court by § 8 of that Act cannot be exercised (*d*). Moreover, notwithstanding the power of invoking the aid of the Court, creditors and contributories complain that, practically, they have not the same facilities for ascertaining what is being done by the liquidator under a voluntary winding up, or winding up subject to supervision, as they have when a company is wound up compulsorily.

Difference between winding up voluntarily and subject to supervision.

The theoretical difference between winding up voluntarily and winding up subject to supervision appears to be that the first is supposed to be carried on without any aid from the Court, except when that aid is invoked for some special and limited purpose; whilst when a company is wound up subject to supervision, the extent to which the winding up shall be carried on without consulting the judge or the registrar depends upon the order which has been made (*e*). It is not usual, however, to impose any restrictions, unless some necessity for so doing is shown to exist (*f*); and consequently the practical difference between these two methods of winding up consists mainly, if not entirely, in the comparative facilities for obtaining the assistance of the Court, and in the comparative ease with which the liquidator can be controlled, and actions, executions, or other proceedings against the company be prevented; the difference is now very small (*g*).

Modification of usual orders.

Notwithstanding the differences above pointed out, the Court can, by placing restrictions on the liquidator in a voluntary winding up (*h*), or by dispensing with restrictions on the liquidator in a winding up by the Court (*i*), almost turn a winding up under supervision into a winding up by

(*c*) See *ante*, p. 826.

(*d*) See *ante*, pp. 858 and 928 *et seq.*

(*e*) See Comp. Act, 1862, § 147, and Rules, 1892, r. 17.

(*f*) For the usual form, see Rules, 1890, form 19.

(*g*) See Practice note, W. N. 1901, p. 14, and *infra*, pp. 1193 *et seq.*

(*h*) *London Quays and Warehouses Co.*, 3 Ch. 394; *Watson & Sons, Ld.* [1891], 2 Ch. 55.

(*i*) *Rochdale Property & General Finance Co.*, 12 Ch. D. 775.

the Court, and a winding up by the Court into a winding up under supervision; and although the Companies (Winding-up) Act, 1890, does not apply to a voluntary winding up, whether under supervision or not, it can be made use of by the Court for the purpose of placing restrictions on the powers of the liquidator analogous to those which the legislature has imposed on him in the case of a winding up by the Court (*k*).

SECTION II.—OF WINDING UP VOLUNTARILY.

Companies capable of being wound up voluntarily.

All companies registered under the Companies Act, 1862, and also all companies which, though not so registered, have been registered under the Acts of 1856—1858 (*l*), and also all industrial and provident societies registered under 56 & 57 Vict. c. 39 (*m*), and building societies under 37 & 38 Vict. c. 42 (*n*), may be wound up voluntarily (*o*). But no other company can (*p*). But although unregistered companies cannot be wound up voluntarily under the Act, there is, theoretically, nothing to prevent the members of such companies, if unincorporated, from dissolving the partnership which subsists between them, and from applying their joint assets in discharging their joint liabilities, and dividing the surplus amongst themselves. It is seldom, however, that this can be done (*q*); for the successful carrying out of such a scheme is liable to be defeated not only by disagreement amongst the shareholders, but also by the importunity of creditors. Practically, therefore, and excepting a few rare cases, unregistered companies must be wound up by the Court.

A company capable of being wound up voluntarily under the Act may be so wound up,—

(*k*) *Watson & Sons, Ld.* [1891], 2 Ch. 55.

(*l*) *Torquay Bath Co.*, 32 Beav. 581; *London India Rubber Co.*, 1 Ch. 329.

(*m*) § 58. See under the earlier Acts, 25 & 26 Vict. c. 87, § 17, and 39 & 40 Vict. c. 45, § 17.

(*n*) § 32, sub-s. (4), *Sunderland, &c., Building Socy.*, 21 Q. B. D. 349, and 57 & 58 Vict. c. 47, § 8, and *infra*, Appx., No. III.

(*o*) See §§ 129, 176, 177, and 196 of the Companies Act, 1862.

(*p*) § 200, cl. 2.

(*q*) See as to Friendly Societies, 59 & 60 Vict. c. 25, §§ 78-80. As to the registration of such societies under the Companies Act, see ib., § 71.

Circumstances under which a company may be wound up voluntarily.

1. When the time, if any, fixed by the articles for the duration or dissolution of the company has expired or arrived, and the members have passed a resolution requiring the company to be wound up voluntarily (*r*).

2. When the members have passed a special resolution requiring the company to be so wound up (*s*).

3. When the members have passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind it up (*t*).

The resolution in this last case must be passed in the manner required for a special resolution, but no confirmation of it is necessary (*u*).

The resolution must, in the second and third of the above cases, be advertised in the *Gazette* (*v*); and in the second case, a copy of the resolution must be sent to the registrar of joint stock companies (*w*).

Extraordinary resolution.

Bridport Old Brewery Company.

With respect to extraordinary resolutions, the following case is important:—In the case of the *Bridport Old Brewery Company* (*x*), notice was given that an extraordinary meeting would be held to consider, and, if so determined, to pass a resolution to wind up the company voluntarily. The meeting passed a resolution that it had been proved that the company could not, by reason of its liabilities, continue its business, and that it was advisable to wind up the company. This resolution was never confirmed, and could not, therefore, be supported as a special resolution. It was held that it could not be supported as an extraordinary resolution, inasmuch as the notice was so framed as to lead to the supposition that a special resolution, requiring confirmation, was to be proposed, and did not sufficiently disclose an intention to proceed by way of extraordinary resolution.

Notices of meetings.

A notice, however, may be good in part and bad in part; and if it is good so far as it relates to the passing of a resolution to

(*r*) Comp. Act, 1862, §§ 129 and 130.

(*s*) § 129.

(*t*) Ib.

(*u*) Ib. and § 51.

(*v*) § 132.

(*w*) § 53.

(*x*) 2 Ch. 191. See, also, *Silkstone Fall Colliery Co.*, 1 Ch. D. 38; *National Savings Bank Assoc.*, 1 Ch. p. 553; *Inns of Court Co.*, W. N. 1866, 348.

wind up, a resolution to that effect may be valid, although the rest of the notice may relate to some proposed resolution which is *ultra vires*, and such resolution may also be passed (*y*). The notice convening the meeting must be sent out under the authority of the directors acting as a board (*z*).

Effect of resolution to wind up.

The effect of a valid resolution to wind up voluntarily, when a compulsory winding-up order is sought to be obtained, has been considered already (*a*). It is only necessary here to remind the reader that, although a company may be in course of winding up voluntarily, any creditor who can satisfy the Court that his rights are prejudiced, or the Official Receiver, if he can satisfy the Court that the interests of the creditors or contributories are prejudiced, is entitled to have the company wound up by the Court (*b*); but the Court may adopt all or any of the proceedings taken in the course of the voluntary winding up (*c*).

Debt incurred in voluntary winding up.

A debt due from the company under an agreement entered into by the liquidator in the voluntary winding up is sufficient to support a petition for a compulsory order (*d*).

Commencement of winding up.

The time at which the winding up is deemed to commence is the time at which the resolution to wind up is passed (*e*); and this, when the resolution is special, means when the second resolution confirming the first is passed (*f*). After the commencement of the winding up the company must cease to carry on business, except for the purpose of winding up its affairs (*g*). The onus of proving that a contract entered into

(*y*) *Cleve* v. *Financial Corporation*, 16 Eq. 363; *Stone* v. *City and County Bank*, 3 C. P. D. 282, at pp. 307 and 313.

(*z*) *Haycraft Gold, &c., Co.* [1900], 2 Ch. 230; and *State of Wyoming Syndicate* [1901], 2 Ch. 431.

(*a*) *Ante*, pp. 859 and 864. In the case of the *Bridport Old Brewery Co.*, *supra*, the Court made a compulsory order on the petition of a creditor. See, further, *infra*, pp. 1194 *et seq.*

(*b*) § 145, and Comp. Winding-up Act, 1890, § 14, and *ante*, pp. 859, 860. As to the right of contributories in this respect, see *Gold Co.*, 11 Ch. D. 701, and *ante*, p. 864.

(*c*) § 146.

(*d*) *Bank of South Australia* (2) [1895], 1 Ch. 578; as to a petition for a supervision order, see *Bank of S. Australia* [1894], 3 Ch. 722.

(*e*) § 130. For the effect of a subsequent order for a compulsory winding up, see *Taurine Co.*, 25 Ch. D. 118; *Thomas* v. *Patent Lionite Co.*, 17 Ch. D. 250. See, *ante*, p. 897.

(*f*) *Emperor Life Assurance Co.*, 31 Ch. D. 78, and *ante*, p. 897; *Dawes' case*, 6 Eq. 232; *Ex parte Colborne and Strawbridge*, 11 Eq. 478; *Weston's case*, 4 Ch. 20.

(*g*) § 131.

by a company, which is being wound up voluntarily, is not required for the purposes of the winding up, lies on the party disputing the validity of the contract (*h*).

Powers after winding up.

The company retains its corporate state and all its corporate powers (*i*) until its affairs are wound up, and it has been actually dissolved, as mentioned below (*k*). After the passing of the resolution to wind up, no shares can be lawfully transferred, except to or with the sanction of the liquidators, nor can the status of its members be altered (*l*); nor can the property of the company be dealt with without their sanction (*m*).

Liquidators.

Appointment.

The first thing to be done after a resolution to wind up is passed is to appoint one or more liquidators, for the purpose of carrying the resolution into effect (*n*). The appointment lies with the members (*o*); but they are empowered to delegate the appointment to the creditors of the company, or to a committee of them (*p*). If there is no liquidator, the Court may appoint one or more, on the application of a contributory (*q*); this power may be exercised on the retirement of a liquidator (*r*). The Court may also appoint an additional liquidator, and may do so on the application of the existing liquidator (*s*).

Additional liquidator.

Resolutions appointing liquidators.

Liquidators may be appointed at a meeting convened for the purpose of passing a resolution to wind up voluntarily, although no notice has been given that their appointment will be proposed at such meeting (*t*). If the resolution to wind

(*h*) *Hire Purchase Co.* v. *Richens*, 20 Q. B. D. 387.

(*i*) § 131, and *Ladd's case* [1893], 3 Ch. 450, as to powers of forfeiture.

(*k*) § 143, and *infra*, p. 1192.

(*l*) § 131. See *Taylor, Phillips, and Rickards' cases* [1897], 1 Ch. 298, and *ante*, pp. 1130 *et seq.*, and 1134.

(*m*) See §§ 131, 133, and *ante*, p. 899.

(*n*) § 133, cl. 2, 4, 6. A liquidator cannot be appointed except when there is a valid resolution to wind up. *Indian Zoedone Co.*, 26 Ch. D. 70.

(*o*) § 133, cl. 3, and § 140.

(*p*) § 135.

(*q*) § 141.

(*r*) *Sheppy Portland Cement Co.*, W. N. 1892, p. 184. In the case of his removal, see *infra*, p. 1184.

(*s*) §§ 138 and 141. *Sunlight Incandescent Gas Lamp Co.* [1900], 2 Ch. 728.

(*t*) *Trench Tubeless Tyre Co.* [1900], 1 Ch. 408; *Welsh Flannel Co.*, 20 Eq. 360; and see Lord Chelmsford's observations in L. R. 2 H. L. 355. But see, *contra*, *Stearic Acid Co.*, 9 Jur. N. S. 1066; *Anglo-Californian Co.* v. *Lewis*, 6 H. & N. 174. In that case the invalidity of the appointment of the liquidators enabled a shareholder to defeat an action for calls made by them.

up is proposed as a special resolution, and a resolution appointing a liquidator is passed at the first of the two meetings necessary for the passing of the special resolution, the appointment to be valid must be confirmed at the second meeting (*u*); if the resolution appointing the liquidator is dropped at the second meeting, a resolution for the appointment of another person may be proposed and carried without further notice (*x*).

Irregular appointments.

Whether acts done by liquidators improperly appointed are null and void, or whether they are valid notwithstanding the defect in their appointment, is not so clear as might be desired. It seems, however, that when their appointment is proved to have been invalid, acts done by them are void (*y*). But it is conceived that it is by no means every irregularity in the appointment which will vitiate it; in many cases the maxim *fieri non debuit, sed factum valet*, may apply (*z*).

Removal.

The Court may, on due cause shown, remove any liquidator and appoint another (*a*): and it is not essential to prove misconduct or unfitness on the part of a liquidator, in order to induce the Court to remove him (*b*). If a shareholder has made an application on behalf of himself and the other shareholders to the Court for the removal of a liquidator, it is not a contempt of Court for him to send a circular to the other shareholders stating the grounds of his application, and asking them to support it (*c*).

Powers of directors.

Upon the appointment of liquidators, the powers of the directors cease, except so far as their continuance may be

(*u*) *Indian Zoedone Co.*, 26 Ch. D. 70.

(*x*) *Trench Tubeless Tyre Co.* [1900], 1 Ch. 408.

(*y*) See note (*t*), and § 67 of the Act, and *ante*, pp. 415, 416. In the case of the *Bridport Old Brewery Co.*, 2 Ch. 191, the effect of that section was discussed.

(*z*) See *ante*, pp. 227 and 415.

(*a*) Comp. Act, 1862, § 141. *Sir John Moore Gold Mining Co.*, 12 Ch. D. 325; *British Nation Life Ass. Assoc.*, 14 Eq. 492; *Marseilles Extension, &c., Co.*, 4 Eq. 692. And see *Ex parte Charlesworth*, 36 Ch. D. 299; and *ante*, p. 970. *Ex parte Pulbrook*, 2 De G. J. & S. 349.

(*b*) *Marseilles Extension, &c., Co.*, 4 Eq. 692; *British Nation Life Ass. Assoc.*, 14 Eq. 492; and cases in last note.

(*c*) *New Gold Coast Exploration Co.* [1901], 1 Ch. 860, and see the comments there made on *Crown Bank*, 44 Ch. D. 649, and *Coats* v. *Chadwick* [1894], 1 Ch. 347.

sanctioned by the members in general meeting, or by the liquidators (*d*). If necessary, fresh directors may be appointed by the company in general meeting, and they may be authorised to exercise the powers of the company, *e.g.*, the power of forfeiting shares for non-payment of calls (*e*).

Remuneration of liquidator.

The company may fix the remuneration of the liquidator (*f*). If his remuneration is not fixed by the company, the Court can fix it (*g*). The Court is not bound to adopt the scale fee applicable to a compulsory winding up, but will deal with each case on its merits (*h*). The remuneration of the liquidator is payable out of the assets of the company (*i*), but ranks in priority after the costs of his solicitor (*k*).

Duties of liquidators.

The duties of the liquidators are—

1. To apply the property of the company in satisfaction of its liabilities, *pari passu* (*l*).

2. To pay the debts of the company, and adjust the rights of the contributories amongst themselves (*m*).

3. To pay the costs of winding up (*n*).

4. As soon as the affairs of the company are fully wound up, to make up an account showing the manner in which such winding up has been conducted (*o*).

5. To call a meeting of the company (*p*) for the purpose of having this account laid before them, and hearing any explanation that may be given by the liquidators (*q*).

6. To make a return to the registrar of joint-stock companies of such meeting having been held (*r*).

If the winding up continues more than a year, the liquidators must, at the end of the first and each succeeding year,

(*d*) § 133, cl. 5. *James* v. *May*, L. R. 6 H. L. 328. See *infra*, p. 1187, note (*k*).

(*e*) *Ladd's case* [1893], 3 Ch. 450.

(*f*) Comp. Act, 1862, § 133, cl. (3).

(*g*) §§ 93 and 138.

(*h*) *Amalgamated Syndicates, Ld.* [1901], 2 Ch. 181. See ib. as to charges for letters.

(*i*) § 144.

(*k*) *Sanitary Burial Assoc.* [1900], 2 Ch. 288.

(*l*) § 133, cl. 1.

(*m*) § 133, cl. 10. Though the words in this section differ from those in § 109, which applies to a winding up by the Court, their meaning is the same: *Bridgewater Navigation Co.*, 39 Ch. D. pp. 21 and 26; and *Birch* v. *Cropper*, 14 App. Ca. p. 544.

(*n*) Ib. cl. 9, and § 144.

(*o*) § 142.

(*p*) *Qu.* members or the contributories?

(*q*) § 142.

(*r*) § 143.

summon a general meeting of the company (*s*), and lay before such meeting an account showing their acts and dealings, and the manner in which the winding up has been conducted during the preceding year (*t*). They must also send to the registrar of joint-stock companies the statements and information required by § 15 of the Companies (Winding-up) Act, 1890 (*u*).

Powers of liquidators.

In order to enable the liquidators to perform their duties, they are authorised—

1. To exercise all powers given by the Act of 1862 to the liquidator in a compulsory winding up (*x*).

2. To exercise the powers given to the Court of settling the list of contributories (*y*);

3. To make calls upon all or any of the contributories settled on the list to the extent of their liability (*z*);

4. To apply to the Court to determine any question arising in the winding up, or to exercise any of the powers which the Court might exercise if the company were being wound up by it (*a*). This enables the Court to do in a voluntary winding up whatever it can do in a compulsory winding up (*b*), unless there is something in the Act to the contrary (*c*).

(*s*) *Qu.* members or the contributories?

(*t*) § 139.

(*u*) See *ante*, pp. 946 *et seq.*, 974, and *infra*, p. 1192, note (*d*); the section applies to a voluntary winding up, see *Stock & Share, &c., Co.* [1894], 1 Ch. 736.

(*x*) § 133, cl. 7. See, *ante*, p. 978. It is apprehended that the voluntary liquidators can, without the sanction of the Court, do any of those things which the liquidator in a compulsory winding up can do under § 95, with the sanction of the Court. See as to powers of sale, *Bank of South Australia*(2), [1895], 1 Ch. 578, p. 592.

(*y*) § 133, cl. 8. See *ante*, pp. 1034 *et seq.* The Rules of 1890 do not apply to the settlement of the list in a voluntary winding up.

(*z*) § 133, cl. 9. See *ante*, pp. 1144 *et seq.* and last note. A liquidator can also, by giving notice, enforce calls made by the directors before the commencement of the winding up, although no notice of the call had been given by them: *Stone* v. *City and County Bank*, 3 C. P. D. 282. As to orders for the payment of calls, see *ante*, pp. 1147, 1148.

(*a*) § 138, and Rules of 1862, r. 51. These Rules are still applicable, with some modifications, to a voluntary winding up and a winding up under supervision, see Rules, 1892, r. 17.

(*b*) *Rance's case*, 6 Ch. 104; *Union Bank of Kingston upon Hull*, 13 Ch. D. 808; *Heiron's case*, 15 Ch. D. 139; *Gold Co.*, 12 Ch. D. 77. In a proper case the Court may order costs of all parties, as between solicitor and client, on the higher scale out of the surplus assets, *Birch* v. *Cropper*, 14 App. Ca. p. 549.

(*c*) See *Callao Bis Co.*, 42 Ch. D. 169.

5. To summon general meetings of the company (*d*).

The liquidators are also empowered, with the sanction of an extraordinary resolution of the company, to make arrangements with creditors and contributories, and to compromise all claims by or against the company (*e*); and with the sanction of a special resolution to sell the business of the company, in consideration of shares, policies or other like interests, for the purpose of distribution amongst the members (*f*).

Prosecution of directors.

Lastly, the liquidators are empowered, with the sanction of the Court, to prosecute delinquent directors, managers, officers, or members of the company (*g*).

Where there are more than one.

Where there are more liquidators than one, the powers given to them by the Act may be exercised by such one or more of them as may be determined at the time of their appointment, or, in default of such determination, by any number not less than two (*h*). There is no necessity, however, to appoint more than one (*i*). Where, however, there are more than one, and one is not empowered by the company to act for all, the liquidators cannot themselves delegate their powers to one of their own body; and if they do, his acts will not bind the company (*k*). Moreover, if several liquidators are appointed the survivor cannot act alone (*l*).

Control of members and creditors over liquidators.

The exercise by the liquidators of the foregoing powers is subject to be controlled by the company and its creditors; for the company is empowered by an extraordinary resolution to enter into any arrangement, with three-fourths in number and value of its creditors, with respect to the powers to be exercised by the liquidators, and the manner in which they are to be exercised (*m*). Moreover, any arrangement so made is binding as well on the contributories as on the creditors, if not appealed

(*d*) § 139.

(*e*) §§ 159 and 160. See *ante*, pp. 984 *et seq.* as to compromises, and *Wedgwood Coal and Iron Co.*, 6 Ch. D. 627.

(*f*) § 161. See *infra*, as to this.

(*g*) § 168. To obtain this sanction a petition must be presented. See Rules, 1862, r. 51.

(*h*) § 133, cl. 6. As to conveyances when the company's property is vested in them, see *ante*, p. 977.

(*i*) § 133, cl. 4.

(*k*) See the next note and *Ex parte Birmingham Bank*, 3 Ch. 651; *Bolognesi's case*, 5 ib. 567; *Ex parte Agra and Masterman's Bank*, 6 ib. 206, where bills were accepted by one out of four.

(*l*) *Metropolitan Bank* v. *Jones*, 2 Ch. D. 366.

(*m*) §§ 135 and 136.

against within three weeks from the date of its completion (*n*). Moreover, any contributory or creditor may apply to the Court to determine any question arising in the winding up (*o*), or to stay the winding up and all proceedings therein (*p*); and any creditor can apply for a compulsory order to wind up under § 145, at any time before the company is dissolved (*q*). The Official Receiver has a similar power under § 14 of the Companies (Winding-up) Act, 1890 (*r*).

Liability.

The liability of a liquidator has been already examined (*s*).

Receiver for debenture holders.

The position of a liquidator when debenture holders apply to the Court for the appointment of a receiver has been discussed (*t*). It may be observed here that the Court has no jurisdiction to fix the remuneration of a receiver appointed by the debenture holders, upon an application by the liquidator in the winding up (*u*).

Sale of assets.

With respect to the sale of the assets of the company, the liquidators apparently have power to sell them for money as best they can; at the same time, if any particular sale is opposed by any of the creditors or contributories, it may be prudent to apply to the Court to sanction it (*x*). A sale of the assets upon the terms that the purchaser shall pay the company's debts out of them, and that if such assets are more

(*n*) § 137. The appeal may be by petition or motion, or if the judge so directs, by summons, see Rules, 1862, r. 51, and Rules, 1892, r. 17.

(*o*) § 138, and Comp. Act, 1900, § 25. The application should be by motion or petition, or if the judge so directs, by summons, see Rules, 1862, r. 51, and Rules, 1892, r. 17. See, for examples by petition, *Anglesea Colliery Co.*, 2 Eq. 380; *Crookhaven Mining Co.*, 3 Eq. 69; by motion, *Horbury Bridge Coal, &c., Co.*, 11 Ch. D. 109; by summons, *Wakefield Rolling Stock Co.* [1892], 3 Ch. 163; *Mysore West Gold Mining Co.*, 42 Ch. D. 535.

(*p*) *Schanschieff Electric Battery Syndicate*, W. N. 1888, 165; and see *South Barrule Slate Quarry Co.*, 8 Eq. 688.

(*q*) See *ante*, p. 859. As to dissolution, see § 143, and *infra*, p. 1192.

(*r*) See *ante*, p. 860.

(*s*) See *Knowles* v. *Scott* [1891], 1 Ch. 717, and *ante*, pp. 981, 982.

(*t*) *Ante*, pp. 341 *et seq.*

(*u*) *Vimbos, Ld.* [1900], 1 Ch. 470.

(*x*) This was done in the *Scinde, &c., Bank Corporation*, W. N. 1867, 41, and the agreement for sale was confirmed. As to compelling the liquidators to accept the best of two offers, see *The Colonial and Gen. Gas Co.*, ib. 42, where, however, the company was being wound up subject to supervision.

than sufficient for the purpose, the surplus shall be handed back to the company, but that if they are insufficient the company will make good the deficiency out of calls to be made for the purpose, is not *ultra vires* (*y*). The deficiency, when ascertained, is a debt which will support a petition for the compulsory winding up of the company (*z*).

Transfer of business to another company.

One of the most important powers of the liquidators under a voluntary winding up is that of selling the business and goodwill of the company being wound up to another company, in consideration of shares, policies, or other like interests in the purchasing company. This power is conferred by §§ 161 and 162 of the Companies Act, 1862 (*a*), from which it will be seen—

1. That the power can only be exercised under the authority of a special resolution of the company (*b*) being wound up;

2. That if so sanctioned, the transfer can be made notwithstanding the opposition of the minority (*c*);

3. That any dissentient can require the liquidators, at their option, to abstain from carrying the resolution into effect, or to purchase the interest of the dissentient (*d*);

4. That this requisition must be made by a notice in writing, addressed to the liquidators, and left at the registered office of the company not later than seven days after the passing of the resolution (*e*);

5. That in the event of the liquidators electing to purchase the interest of a dissentient, the price, if not agreed upon, must be ascertained by arbitration, as provided by 8 & 9 Vict. c. 16, §§ 128—134 (*f*).

(*y*) *Bank of South Australia* (2) [1895], 1 Ch. 579.

(*z*) Ib.; *qu.* if it would support a petition for a supervision order, see *Bank of South Australia* [1894], 3 Ch. 722, which was doubted in [1895], 1 Ch. 579.

(*a*) See also 31 & 32 Vict. c. 68, which, however, only applies to companies being wound up when the Act passed.

(*b*) *Qu.* members or contributories?

(*c*) *Imp. Merc. Credit Ass.*, 12 Eq 504; *Tunis Railways Co.*, 10 Ch. D. 270, note; affd. W. N. 1874, 165.

(*d*) *Ex parte Fox*, 6 Ch. 176, where a resolution depriving a shareholder of this right was held void.

(*e*) *Union Bank of Kingston-upon-Hull*, 13 Ch. D. 808.

(*f*) The judge can appoint an umpire, if the arbitrators do not agree. See *Re Lord*, 24 L. J. Ch. 145. So can a judge of the Queen's Bench Division. *Re Anglo-Italian Bank and De Rosaz*, L. R. 2 Q. B. 452. As to costs, see *Imp. Merc. Credit Assoc.*, 12 Eq. 504.

6. That if an order be made within a year for winding up the company by or subject to the supervision of the Court, the resolution is invalid unless it is sanctioned by the Court (*g*) at or after the making of the order (*h*).

The decisions on these sections and the mode of winding up and reconstructing companies under them will be noticed in the next Chapter (*infra*, pp. 1203 *et seq.*).

Staying actions, &c.

A purely voluntary winding up does not, *per se*, prevent a creditor of the company from suing it, or issuing execution against it; it is not, therefore, in any case necessary for him to apply for leave so to do (*i*). But as already stated, he may be restrained as well from issuing execution as from suing (*k*). The application to stay an execution may be made at any time before it is completed (*l*).

Winding up may be a breach of contract.

A resolution to wind up voluntarily may disable a company from performing its contracts; and if this is the case, the company may be sued for a breach of them (*m*). But, generally speaking, a winding-up order is not equivalent to a breach of contract (*n*).

Payment of debts.

The debts to be paid out of the assets of the company are the same as those which would have to be paid under a compulsory winding up (*o*). But in order to exclude creditors who do not prove within a given time, such time must apparently be fixed by the Court; the fixing of such time not being one of those things which liquidators alone can do (*p*). The rules as to set-off are the same as in a compulsory winding up (*q*).

The list of contributories.

The contributories in a voluntary winding up are those persons who would be contributories on a compulsory winding up having the same date for its commencement. The

(*g*) § 161.

(*h*) *Callao Bis Co.*, 42 Ch. D. 169.

(*i*) See §§ 85, 87, and 163, which only apply to winding up by the Court, or subject to its supervision.

(*k*) § 138. See *ante*, pp. 907 *et seq.* and 911 *et seq.*, and as to appointing a receiver in a debenture holder's action, see *ante*, pp. 341 *et seq.*

(*l*) *Westbury* v. *Twigg & Co.* [1892], 1 Q. B. 77. As to distress for rent, see *Roundwood Colliery Co.* [1897], 1 Ch. 373, and *ante*, pp. 914 *et seq.*

(*m*) *Inchbald* v. *Western Neilgherry Coffee Co.*, 17 C. B. N. S. 733. See, also, as to a voluntary winding up being equivalent to a dismissal of a servant, *ante*, pp. 1015, 1016.

(*n*) *Ante*, p. 1014.

(*o*) See *ante*, pp. 997 *et seq.*

(*p*) See § 107.

(*q*) See §§ 38 and 101, and *infra*, note (*z*).

liquidators settle the list, and they have all the powers of the Court for this purpose (*r*). But whether under these words the liquidators have power to rectify the register of members may well be doubted (*s*). The liquidators, however, have power to sanction transfers of shares made after the commencement of the winding up (*t*). In exercising this power regard ought to be had to the principles acted upon by the Court in like cases (*u*).

Transfer of shares.

Calls.

The liquidators are also empowered to make calls on the contributories (*x*); and they have the same discretion both as to when to make a call, and as to its amount, as the Court has under a compulsory winding up (*y*). The liquidators, however, have no power to enforce payment without judicial assistance. The methods of enforcing payment are either by an action in the name of the company (*z*); or, if the contributory is already settled on the list, by an application to the Court to order payment under the powers conferred upon it by the Companies Act, 1862 (*a*). In the event of death or bankruptcy payment can be obtained wholly or in part, as the case may be, by administering the estate of the deceased, or by proof against the bankrupt's estate. The same rules as to set-off against calls apply when a company is being wound up voluntarily as when it is being wound up compulsorily (*b*).

Companies (Winding-up) Act, 1890.

The provisions of the Companies (Winding-up) Act, 1890, which relate to proceedings against directors and others for

(*r*) § 133, cl. 8. As to giving notice of settling the list, see the *London Bank of Scotland*, W. N. 1867, 114; *Brighton Arcade Co.* v. *Dowling*, L. R. 3 C. P. pp. 175, 184.

(*s*) Compare § 133, cl. 8, with § § 38, 95, and 98; and see *Gilbert's case*, 5 Ch. 559; *Brighton Arcade Co.* v. *Dowling*, *ubi sup.*

(*t*) See § 131 and *Taylor*, *Rickards*, *and Phillips' cases* [1897], 1 Ch. 298, and *ante*, p. 1135.

(*u*) See *ante*, pp. 1128—1135.

(*x*) § 133, cl. 9.

(*y*) Compare § 133, cl. 9, with § 202. See *ante*, pp. 1149 *et seq.*

(*z*) See, for instance, *Brighton Arcade Co.* v. *Dowling*, L. R. 3 C. P. 175, which shows that no notice of being on the list of contributories is necessary; *General Discount Co.* v. *Stokes*, 17 C. B. N. S. 765; *Hull Flax Co.* v. *Wellesley*, 6 H. & N. 38; *Garnett and Moseley Gold Mining Co.* v. *Sutton*, 3 B. & Sm. 321.

(*a*) See § 138. *Rance's case*, 6 Ch. 104.

(*b*) *Brighton Arcade Co.* v. *Dowling*, L. R. 3 C. P. 175, is opposed to this; but this case is now overruled by *Black & Co.'s case*, 8 Ch. 254; and see also, *ante*, pp. 1032, 1033.

misfeasance (c), and to the information to be furnished by liquidators when the winding up is not concluded within a year, and to the ascertainment and getting in of unclaimed and undistributed assets in the hands of liquidators (d), apply to companies which are being wound up voluntarily, as well as to those which are being wound up compulsorily.

Costs.

The costs of winding up are payable out of the assets of the company in priority to all other claims (e); and the costs of the liquidators incurred in prosecuting delinquent directors, &c., are entitled to like priority (f).

Surplus assets.

In distributing the surplus assets care must be taken to put the contributories as far as practicable on an equality, regard being had to the amounts paid up on their respective shares (g).

Dissolution of company.

A company which has been wound up voluntarily is dissolved at the end of three months from the date of the registration of the return which the liquidators are required to make as before mentioned (h). After the liquidator has made his return the Court has sufficient jurisdiction to make calls on the contributories for the payment of the debts of the company or the adjustment of the rights of the contributories, *inter se*, if an application be made before the three months have expired (i). After the expiration of the three months the Court has no jurisdiction to make any order unless the dissolution of the company was obtained by fraud (k), or unless the proceedings in which the order is asked were pending at

(c) § 10. See *ante*, pp. 940 *et seq.*

(d) Act, 1890, § 15. See *ante*, pp. 946 *et seq.* In a voluntary winding up applications under § 15 are now to be made in the High Court to the judge who exercises jurisdiction under the Act, 1890, see Rules, 1890, r. 130A (d), as modified by Rules, 1892, rr. 1, 3 (1), and 35, and *Mottrams Brewery, Ltd.* (Byrne, J., 31 Jan., 1902, not reported).

(e) § 144. See *ante*, pp. 1160 *et seq.* *Semble*, the order of priority in Rules, 1890, r. 31 (*ante*, pp. 1166, 1167), should be followed as far as applicable, see *Sanitary Burial Assoc.* [1900], 2 Ch. 288.

(f) § 168.

(g) See *Exchange Drapery Co.*, 38 Ch. D. 171; *Ex parte Maude*, 6 Ch. 51, and *ante*, pp. 1152 and 1174, 1175.

(h) § 143, and *ante*, p. 1185.

(i) See *Crookhaven Mining Co.*, 3 Eq. 69.

(k) *Pinto Silver Mining Co.*, 8 Ch. D. 273; *London and Caledonian Marine Ins. Co.*, 11 Ch. D. 140, where the Court refused to make an order for the compulsory winding up of the company. See, also, *Westbourne Grove Drapery Co.*, W. N. 1878, 195.

the time of the dissolution and would have been disposed of before that date, but for a delay for which the Court alone is responsible (*l*). A company, moreover, will be restrained from dissolving without notice to those persons to whom it may in future become liable (*m*).

SECTION III.—OF WINDING UP SUBJECT TO THE SUPERVISION OF THE COURT.

Winding up subject to supervision of Court.

After a resolution has been passed for winding up a company voluntarily, the Court may make an order directing that the voluntary winding up shall continue, but subject to such supervision of the Court and with such liberty for creditors, contributories, or others to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just (*n*).

Petition.

The application for such an order is made by a petition (*o*), which must be advertised, verified, and served as required in the case of a petition for winding up by the Court (*p*). It must also be served on the liquidators if there are any (*q*).

In determining what ought to be done upon such a petition, the Court may consult the wishes of the creditors and contributories, and may summon meetings for the purpose of ascertaining their wishes (*r*).

(*l*) See *Whiteley Exerciser, Ld.* v. *Gamage* [1898], 2 Ch. 405; distinguished in *Salton* v. *New Beeston Cycle Co.* [1900], 1 Ch. 43. See further as to the effect of a dissolution, *ante*, p. 1176.

(*m*) See *Haytor Granite Co.*, 1 Ch. 77, a claim for rent, where the company being lessee had assigned; and see *Gooch* v. *London Banking Association*, 32 Ch. D. 41; *Lord Elphinstone* v. *Monkland Iron Co.*, 11 App. Ca. 332, and *ante*, p. 1018. As to the jurisdiction of the Court to restrain the dissolution of a company being wound up voluntarily under the Acts of 1856–8, see *Lowndes* v. *Garnett & Moseley Gold Mining Co.*, 2 J. & H. 282.

(*n*) § 147. See the form of the order, Rules, 1890, form 19, and as to who may petition, *ante*, p. 841. It seems doubtful whether a debt incurred since the commencement of the voluntary winding up will support a petition for a supervision order; see *Bank of South Australia* [1894], 3 Ch. 722, doubted [1895], 1 Ch. 578.

(*o*) § 148. See *infra*, p. 1196, note (*h*).

(*p*) *Ante*, pp. 882 *et seq.*

(*q*) Rules, 1890, r. 35. See, *ante*, p. 886.

(*r*) § 149.

When Court will make a supervision order.

The circumstances which influence the Court in determining what order to make on petitions to wind up have been already noticed (*s*); and in addition to what has there been stated it is only necessary to observe that the Court is reluctant to interfere with a voluntary winding up (*t*), and will not, at the instance of a contributory, convert a voluntary winding up into a winding up subject to supervision unless there is misconduct on the part of the liquidators or some other good reason for so doing (*u*). Moreover, now that creditors have the right to apply to the Court under § 138 of the Act of 1862 in a voluntary winding up (*v*), the advantages of a winding up subject to supervision over a purely voluntary winding up are so small that the Court is not disposed to allow the costs of a petition for a supervision order, unless sufficient reason for making it is shown (*x*).

No jurisdiction unless there is a voluntary winding up in existence.

Where there is no proper resolution to wind up voluntarily, the Court cannot make an order to wind up subject to supervision; for such an order presupposes, and, in fact, continues a pre-existing voluntary winding up. Where, therefore, there is no such winding up, all that the Court can do is to make a compulsory order (*y*), or to dismiss the petition, or to allow it to stand over in order to give the shareholders an opportunity of passing a resolution to wind up voluntarily (*z*).

Supervision order when preferred to compulsory order.

Where, however, the Court is satisfied that a proper resolution to wind up has been passed, it will make an order to continue the winding up subject to supervision in preference to a compulsory order, unless a compulsory order is desired by a majority of creditors, or there is some other good reason for making it (*a*). The presence of fraud in the promotion of the

(*s*) *Ante*, pp. 857 *et seq.*

(*t*) See *ante*, pp. 859 and 864.

(*u*) See *Imperial Bank of China, &c.*, 1 Ch. 339; *Beaujolais Wine Co.*, 3 Ch. 15. As to applications by creditors, see *infra*, notes (*d*) to (*h*).

(*v*) See Comp. Act, 1900, § 25.

(*x*) Practice Note, W. N. 1901, p. 14.

(*y*) As in the case of the *Bridport Old Brewery Co.*, 2 Ch. 191, noticed *ante*, p. 1182, and *The National Savings Bank Association*, 1 Ch. 547. See, also, *Patent Floor Cloth Co.*, 8 Eq. 664, where an order for winding up subject to supervision was discharged, and a compulsory order made.

(*z*) See the cases collected, *ante*, pp. 869 *et seq.*

(*a*) The Court will not make a compulsory order against the consent of the petitioner, even if his petition asks for it, *Chepstow Bobbin*

company, and the need for an investigation under § 8 of the Companies (Winding-up) Act, 1890, are circumstances to be taken into consideration (*b*); but a person, whether creditor or shareholder, who asks for a compulsory order on this ground must show a *primâ facie* case calling for investigation (*c*).

London and Mediterranean Bank.

A strong illustration of the preference of the Court before 1890 in favour of a winding up subject to supervision is afforded by the case of the *London and Mediterranean Bank* (*d*). That bank had been amalgamated with the *London and Bombay Bank*. A resoution to wind up the London and Mediterranean Bank voluntarily was passed, and liquidators were appointed; a petition for an order to continue this winding up under the supervision of the Court, and to continue the voluntary liquidators, was afterwards presented by a contributory, and was supported by the company; but was opposed by another contributory, on the ground that a petition to wind up the London and Bombay Bank was pending; and that petition disclosed facts tending to show that the continuance of the voluntary winding by the voluntary liquidators was not for the interests of the contributories. The Court, nevertheless, made the order for continuing the voluntary winding up, subject to supervision (*e*). On a subsequent occasion another petition was presented by two creditors and a contributory in the London and Mediterranean Bank, praying for a compulsory winding-up order, on the ground that the voluntary winding up was not being conducted properly. The petition was supported by other creditors; but the Court, nevertheless, dismissed the petition (*f*), on the ground that a compulsory winding-up order would not be more advantageous to the creditors, or contributories, than the order which already existed; and that if sufficient grounds were shown, the liquidators could be removed as easily under one order as the other.

Mills Co., 36 Ch. D. 563; *New Oriental Bank Corp.* [1892], 3 Ch. 563.

(*b*) See *National Debentures, &c., Corp.* [1891], 5 Ch. 505, and *ante*, p. 858.

(*c*) *Russell Cordner & Co.* [1891], 3 Ch. 171; *Doré Gallery, Ld.*, W.N. 1891, p. 98; *New York Exchange, Ld.*, 39 Ch. D. 415, in all of which cases supervision orders, and not compulsory orders, were made.

(*d*) W. N. 1866, 207 and 317.

(*e*) W. N. 1866, 207; see, too, cases in note (*c*).

(*f*) W. N. 1866, 317.

Conflicting winding-up orders.

In this case it was objected that a compulsory order could not be made until the former order for winding up, subject to supervision, had been discharged on a rehearing or on appeal: but this objection was overruled (*g*). Instances have also occurred in which proceedings, under a compulsory winding-up order, have been stayed, and an order to wind up, subject to supervision, has been substituted for it (*h*). Where this is done, care ought to be taken not to disturb the date of the commencement of the winding up (*i*).

Effect of order to wind up subject to supervision.

The general effect of an order to wind up, subject to supervision, is to continue the voluntary winding up with such restrictions, if any, as the Court may impose (*k*). The presentation of the petition gives the Court the same jurisdiction over actions as a petition for winding up compulsorily (*l*), and has the same effect as such a petition on fraudulent conveyances by the company of its assets (*m*). Moreover, speaking generally, and without reference to the Companies (Winding-up) Act, 1890, an order to wind up, subject to supervision, appears to be equivalent to an order to wind up compulsorily, except that the liquidators can, unless restricted by the Court, exercise, without its sanction, all the powers of liquidators acting in a winding up which is purely voluntary (*n*). The liquidators should, however, apply to the Court for its sanction before doing anything of unusual importance, or which is opposed on grounds not obviously unreasonable. They have power to sell the assets of the company under § 161, if such sale is authorised by a special resolution (*o*).

Special conditions imposed.

The Court can, as has been already observed, impose such restrictions on the powers of a liquidator as to make a winding up under supervision almost the same as a winding up by the

(*g*) W. N. 1866, 317.

(*h*) This was done by Lord Romilly, M. R., in the case of the *General Exchange Bank*, May, 1867. The application was made by summons, not by petition. See *ante*, p. 1193, note (*o*).

(*i*) *Sed qu.* if this can be helped. See *ante*, p. 898.

(*k*) § 147, and see form of order, Rules, 1890, form No. 19. *London Quays, &c., Co.*, 3 Ch. 394.

(*l*) See §§ 148 and 85, *ante*, p. 907.

(*m*) § 164. See *ante*, pp. 899 *et seq.*

(*n*) § 151. *Wright's case*, 5 Ch. 437.

(*o*) *Imp. Merc. Credit Assoc.*, 12 Eq. 504, and see *ante*, p. 1189, and *infra*, pp. 1203 *et seq.*

Court (*p*), and although the provisions of the Companies (Winding-up) Act, 1890, with some exceptions, do not apply to a winding up subject to supervision (*q*), the Court may impose restrictions and duties on the liquidator similar to those imposed by that Act (*r*). Thus orders have been made preventing a liquidator from exercising certain of his powers without the sanction of a committee of creditors (*s*), and requiring the liquidator to make investigations, and report to the Court whether an examination of any persons under § 115 was desirable, and giving liberty to any creditor or contributory to apply to the Court for an examination, if the liquidator reported in the negative (*t*).

Commencement of the winding up.

When a company is ordered to be wound up, subject to supervision, the commencement of the winding up dates from the passing of the resolution on which it is founded (*u*); *i.e.*, where there is a special resolution, from the passing of the confirming resolution (*x*). This is so even where, as frequently happens, the petition on which the order is made precedes the resolution (*y*): so where a provisional liquidator has been appointed upon an earlier petition for a compulsory order (*z*).

Liquidators.

If an order is made for winding up, subject to the supervision of the Court, the Court may appoint one or more liquidators, in addition to or in the absence of any previously appointed (*a*). The additional liquidators have the same

(*p*) See *London Quays, &c., Co.*, 3 Ch. 394, and *ante*, p. 1179.

(*q*) See *ante*, p. 826; §§ 10, 14, and 15 do apply to a company which is being wound up under supervision; see as to § 10, *ante*, p. 940, § 14, *ante*, p. 860, and § 15, *ante*, p. 946. § 3, as to the transfer of proceedings, also applies, see [1894], 1 Ch. p. 742. The Rules of 1862 are, with certain modifications, still applicable to a winding up under supervision; see Rules, 1892, r. 17.

(*r*) *Watson & Sons, Ld.* [1891], 2 Ch. 55.

(*s*) *Watson & Sons, Ld.* [1891], 2 Ch. 55; and *London, Hamburg, &c., Bank*, referred to ib., p. 61.

(*t*) *Land Securities Co.*, W. N. 1894, p. 91. As to the differences between such an examination and a public examination under § 8 of the Act of 1890, see *ante*, pp. 928 *et seq.*, and pp. 933 *et seq.*

(*u*) See § 130.

(*x*) *Emperor Life Ass. Society*, 31 Ch. D. 78; *Ex parte Colborne and Strawbridge*, 11 Eq. 478; *Weston's case*, 4 Ch. 20; *Dawes' case*, 6 Eq. 832.

(*y*) *Weston's case*, 4 Ch. 20, see further, *ante*, p. 697.

(*z*) *Emperor Life Ass. Society*, *ubi supra*.

(*a*) § 150. See *London Quays Co.*, 3 Ch. 394.

powers, are subject to the same obligations, and stand in the same position as if they had been appointed by the company (*b*); they must, however, give security to the satisfaction of the judge (*c*). This power of appointing additional liquidators is sometimes exercised for the protection of creditors (*d*). An appointment of an additional liquidator chosen by the creditors, practically secures to them the same protection as the appointment of a liquidator under an order to wind up compulsorily; and by appointing such additional liquidator the necessity of making a compulsory winding-up order is frequently obviated. Not only can the Court appoint additional liquidators to act with those appointed by the contributories, but it can also remove any liquidator whom they have appointed (*e*). This power, however, can only be exercised on due cause shown; but to induce the Court to exercise it, misconduct on the part of the liquidators need not be proved (*f*).

Reports.

It is usual to require the liquidator in a winding up subject to supervision to make quarterly reports as to the progress of the winding up to the registrar of the Court (*g*). Moreover, § 15 of the Companies (Winding-up) Act, 1890, which relates to the information to be furnished to the registrar of joint-stock companies by liquidators when the winding up is not concluded within a year, and to the ascertainment and getting in of unclaimed assets, applies to companies which are being wound up under supervision (*h*).

Costs and remuneration.

It is usual to require the liquidator in a winding up subject to supervision to submit his costs and remuneration and the costs of his solicitor to taxation, and not to allow their payment out of the assets unless they have been taxed (*i*). When a voluntary winding up is continued under a supervision order,

(*b*) § 150.

(*c*) *Hampshire Land Co.* [1894], 2 Ch. 633.

(*d*) See an instance under the Acts of 1856–58. *Llanfyrnach Silver Lead Mining Co.*, 9 W. R. 500.

(*e*) §§ 141 and 150, and next note.

(*f*) *Ex parte Charlesworth*, 36 Ch. D. 299; *Marseilles Extension, &c., Co.*, 4 Eq. 692, and *British Nation Life Ass. Ass.*, 14 Eq. 492, *ante*, pp. 970 and 1183.

(*g*) *Horner & Co.*, W.N. 1898, p. 159.

(*h*) See *ante*, pp. 946 *et seq.*

(*i*) *Civil Service Brewery Co.*, W. N. 1893, p. 8; *Waterproof Materials Co.*, ib. p. 15.

the costs of the liquidator incurred before the order have priority over the costs of the petitioner, but the costs of the petitioner have priority over the costs of the liquidator incurred since the order (*k*). The remuneration of the liquidator for the period before the order is postponed to the costs of the petitioner and to the costs of the liquidator's solicitor, whether such costs were incurred before or after the order (*l*).

Application of Companies (Winding-up) Act, 1890.

The extent to which the Companies Winding-up Act, 1890, is applicable to a voluntary winding up under the supervision of the Court, has been already considered (*ll*).

Supervision order superseded by compulsory order.

If an order for winding up, subject to the supervision of the Court, is superseded by an order for winding up by the Court, the old liquidators, or any of them, may be appointed liquidators in the compulsory winding up, either with or without other persons (*m*); but until such appointment is made, it is apprehended that the Official Receiver becomes provisional liquidator (*n*).

Staying winding up.

An order for winding up, subject to supervision, may be stayed in a proper case to enable the company to resume business (*o*).

(*k*) *New York Exchange Co.* [1893], 1 Ch. 371.

(*l*) *Sanitary Burial Association* [1900], 2 Ch. 289.

(*ll*) See *ante*, p. 826, and *ante*, p. 1197, note (*q*).

(*m*) § 152. As to the mode of appointment under the new practice, see *ante*, p. 968.

(*n*) Comp. (Winding-up) Act, 1890, § 4, and *ante*, p. 966.

(*o*) *South Barrule Slate Co.*, 8 Eq. 688, where one contributory dissenting was put to his election to retire on payment of the value of his share.

CHAPTER III.

AMALGAMATION AND RECONSTRUCTION OF COMPANIES (a).

Bk. IV. Chap. 3.

Meaning of the word amalgamation

ALTHOUGH the word amalgamation is frequently used in connection with companies, it does not seem to have acquired any technical or well-defined meaning (b). It is perhaps generally understood to express or imply a transfer by one or more companies of their assets and liabilities either to a new company formed to take them, or to an already existing company, in consideration of shares in such company, which are given or are at least offered to the members of the transferring companies.

A power to amalgamate would probably be held to authorise a purchase of the assets and liabilities of another company (c); or a transfer of assets and liabilities in consideration of shares in a company to which such assets are transferred (d). But it does not enable directors to compel their shareholders to become members in a new company with wider objects, whereby their liability may be increased, and probably not in any new company (e).

Power to amalgamate independently of statute.

How far, apart from statute, companies have or have not powers enabling them to amalgamate depends upon the terms of their charters, articles, or deeds of settlement (f). Unless

(a) Parts of this chapter will be found in other portions of the work; but it has been thought convenient to bring the whole subject together, even at the expense of some repetition.

(b) *Higgs' case*, 2 H. & M. 666; *Ex parte Bayshaw*, 4 Eq. 347. *New Zealand Gold Extraction Co.* v. *Peacock* [1894], 1 Q. B. 622; *Wall* v. *London and Northern Assets. Corp.* [1898], 2 Ch. 469; *Foster* v. *Borax Company* [1901], 1 Ch. 326, and [1899], 2 Ch. 180. See, as to the meaning in the Railway Clauses Act, 26 & 27 Vict. c. 92, § 37.

(c) *Era Assurance Soc.*, 1 De G. J. & Sm. 29; *Pulbrook* v. *New Civil Service Co-operation*, 26 W. R. 11.

(d) *Dougan's case*, 8 Ch. 545. *Wall* v. *London and Northern Assets. Corp.* [1898], 2 Ch. 469.

(e) See cases in note (b) above, and *Clinch* v. *Financial Corporation*, 5 Eq. 450; *Imperial Bank of China* v. *Bank of Hindustan*, 6 Eq. 91.

(f) See *ante*, pp. 240 and 255, 256.

these contain distinct provisions for the purpose such powers do not exist (*g*). A company incorporated by charter or special Act of Parliament cannot delegate its powers (*h*), and cannot therefore transfer its business, even for a time, to another company (*i*); nor, in the absence of an express power for the purpose, can the majority of the shareholders of any company bind the minority by an agreement to transfer its property and business (*k*), or to purchase the assets and liabilities of another company (*l*). Whence it follows that two companies cannot amalgamate with each other, unless such a transaction is authorised by the constitutions of both companies (*m*).

Where there is power to amalgamate the terms of the power must be observed (*n*). Thus a power to amalgamate with another company having the same objects will not authorise an amalgamation with a company with wider or different objects (*o*); and a power to amalgamate with the sanction of an extraordinary meeting will not enable an amalgamation to be effected without such sanction, although the amalgamation may have been acted on (*p*). A power to sell and dispose of a business will not authorise a sale in consideration of shares in another company (*q*); nor will general powers of management be sufficient for the purpose (*r*). But

(*g*) *Ernest* v. *Nicholls*, 6 H. L. C. 401, and cases below, note (*k*).

(*h*) *Great Northern Rail. Co.* v. *Eastern Counties Rail. Co.*, 9 Ha. 306.

(*i*) *Huttersley* v. *Skelburne*, 10 W. R. 881; 31 L. J. Ch. 873; *Charlton* v. *Newcastle and Carlisle Rail. Co.*, 5 Jur. N. S. 1096; *Winch* v. *Birkenhead, &c., Rail. Co.*, 5 De G. & S. 562; *Beman* v. *Rufford*, 1 Sim. N. S. 550; *Salomons* v. *Laing*, 12 Beav. 377. Compare *Clay* v. *Rufford*, 5 De G. & S. 768.

(*k*) *Ernest* v. *Nicholls*, 6 H. L. C. 401; *Era Assurance Soc.*, 2 J. & H. 400; 1 H. & M. 672; *Kearns* v. *Leaf*, 1 H. & M. 681.

(*l*) Ib.

(*m*) Ib.; and see *European Soc.*, 8 Ch. D. 679.

(*n*) *Clay* v. *Rufford*, 5 De G. & Sm. 768; *Ernest* v. *Nicholls*, 6 H. L. C. 401. As to the construction of such powers, see *Stace & Worth's case*, 4 Ch. 682; *Bank of Hindustan* v. *Alison*, L. R. 6 C. P. 54, and 9 Ch. 1.

(*o*) *Clinch* v. *Financial Corporation*, 5 Eq. 450.

(*p*) *Stace & Worth's case*, 4 Ch. 682.

(*q*) *Dougan's case*, 8 Ch. 545.

(*r*) *Ernest* v. *Nicholls*, 6 H. L. C. 401; *Era Assurance Soc.*, 2 J. & H. 400; *Saxon Life Assur. Soc.*, ib. 408, and 1 De G. J. & Sm. 29; *Gilbert* v. *Cooper*, 10 Jur. 580; *Beman* v. *Rufford*, 1 Sim. N. S. 550; *Clay* v. *Rufford*, 5 De G. & S. 768.

such powers need not necessarily be conferred by the original constitution of the company; if there is power to alter and amend the constitution of the company they may be subsequently acquired (*s*).

Power of majority.

Whether, where no powers of amalgamation are given by the regulations of a company and no means of acquiring them are provided by such regulations, they can be conferred by a meeting of shareholders, has been much discussed. Amalgamation with another company must involve a complete change in, if not a destruction of, one at least of the companies intending to amalgamate; and even if such a transaction is one which could be effected by a unanimous agreement upon the part of the members, it is difficult to hold that it is one as to which the majority ought to be able to bind the minority (*t*).

But even a unanimous agreement of the members of a company to amalgamate with another company, unless permitted by the terms of its regulations, would be ineffectual except in the case of those companies which are in fact mere partnerships. Such bodies may alter or vary the agreements into which they have entered (*u*). But with respect to companies which are created by a special Act of Parliament, by charter, by letters patent, or by registration, the case is very different: for every company so established is governed by a law defining its objects and limiting its powers, and such law cannot be abrogated by any agreement between the members of the company, however unanimous they may be (*x*).

Amalgamation under statutory power.

Of recent years it has become not unusual for companies governed by the Companies Acts to be registered with powers sufficiently wide to authorise an amalgamation or the sale of their undertakings for shares in other companies (*y*), but even

(*s*) *Argus Life Assur. Soc.*, 39 Ch. D. 571; *Doman's case*, 3 Ch. D. 21.

(*t*) *Beman* v. *Rufford*, 1 Sim. N. S. 550; and see further as to the powers of majorities, *ante*, pp. 434 *et seq.*

(*u* *Keene's Executors' case*, 3 De G. M. & G. 272.

(*x*) See, as to this, *ante*, pp. 434 *et seq.*

(*y*) See for instances *North-West Argentine Rail. Co.* [1900], 2 Ch. 883; *Cotton* v. *Imperial and Foreign, &c., Corp.* [1892], 3 Ch. 454; *Wall* v. *London and Northern Assets Corp.* [1898], 2 Ch. 469; *New Zealand Gold Extraction Co.* v. *Peacock* [1894], 1 Q. B. 622; *Foster* v. *Borax Co.* [1901], 1 Ch.

now, when an amalgamation is desired, recourse is usually had to one or other of the following statutory methods:—

1. Application may be made to Parliament for a special Act to enable companies to amalgamate (*z*). This, however, is not often done now except in cases of companies formed by special Acts.

2. An amalgamation may often be in effect carried out by an arrangement or compromise under the provisions of the Joint Stock Companies Arrangement Act, 1870 (*a*), which has recently been extended so as to apply between the company and its members, as well as between the company and its creditors (*b*).

3. But the most usual method of proceeding is under sections 161 and 162 of the Companies Act, 1862 (*c*). These sections apply to all companies which are registered under the Act. A company not already registered may register for the express purpose of winding up and selling its business under them (*d*); and provided the proposed sale is within the section, no objection to it can be raised on the ground that it is not authorised by the companies' regulations (*e*).

Mode of proceeding under §§ 161, 162 of the Companies Act, 1862.

A company proposing to make use of the powers conferred by these sections passes special resolutions to wind up voluntarily, appoints liquidators, and gives them either a general or special authority to sell or transfer the whole or a part of its business to another company in consideration of shares, policies, or like interests in such company (*f*). The notices summoning the meeting at which the proposed transaction is to be submitted to the shareholders, should give distinct

326; *Vivian & Co., Ld.* [1900], 2 Ch. 654. The existence of debentures with a floating charge does not necessarily prevent the exercise of such a power. See the two last cases and *ante*, pp. 318—320.

(*z*) See *ante*, pp. 244 and 445, as to the right to apply to Parliament.

(*a*) See *ante*, pp. 986 *et seq.*

(*b*) Comp. Act, 1900, § 24.

(*c*) *Ante*, p. 1189.

(*d*) *Southall* v. *British Mutual Life Assur. Soc.*, 11 Eq. 65, and 6 Ch. 614, which was the case of a mutual insurance society.

(*e*) Ib., and *Clinch* v. *Financial Corporation*, 4 Ch. 117, and 5 Eq. 450.

(*f*) § 161. The resolution to wind up voluntarily may be valid although its object may have been to carry out an objectionable scheme: *Ex parte Fox*, 6 Ch. 176. See, also, *Cleve* v. *Financial Corporation*, 16 Eq. 363.

intimation that it is intended to proceed under these sections (*g*). The sale must be to a company (*h*); and not to a person who, though undertaking to form a company, is free to make any bargain he pleases for the sale of the assets to it (*i*). An agreement entered into with a person as the agent or trustee for an unformed company is good (*k*). A sale to a foreign company may be valid, at least where the company selling carries on business abroad (*l*).

Terms and conditions.

The sale may be upon any terms which a majority of the members approve, and which they are competent in point of law to approve on behalf of the company (*m*). Thus a sale may be made in consideration of shares in the purchasing company which are not fully paid up (*n*); and the agreement for the sale may provide that such shares shall be distributed directly among the shareholders of the selling company, and not given to the liquidator as part of the assets in the winding up (*o*). Moreover, the agreement may fix a time, provided it is reasonable, within which the shareholders must apply for the shares to which they are entitled (*p*), and may place the shares not applied for within that time at the disposition of the purchasing company (*q*). If no time is fixed by the agreement, the shareholders must apply within a reasonable time (*r*). Again, it is no objection to a sale that it provides that the purchasing company shall take a portion only of the assets and liabilities of the selling company, leaving the rest

(*g*) *Imperial Bank of China* v. *Bank of Hindustan*, 6 Eq. 91; *Fox's case*, 6 Ch. 176.

(*h*) § 161. A sale may be to a company formed for the purpose of taking over the business and assets of the selling company: *Imperial Merc. Credit Co.*, 12 Eq. 504; *Agra & Masterman's Bank*, ib. 509, note; *Ex parte Poole's executors*, 8 Ch. 702, where the sale was to another company being wound up.

(*i*) *Bird* v. *Bird's Patent Sewage Co.*, 9 Ch. 358.

(*k*) *Hester & Co., Limited*, 44 L. J. N. S. Ch. 757.

(*l*) *Ex parte Fox*, 6 Ch. 183.

(*m*) See cases in note (*h*) above.

(*n*) *City and County Investment Co.*, 13 Ch. D. 475. *Higg's case*, 2 H. & M. 665.

(*o*) Ib.

(*p*) *Postlethwaite* v. *Port Phillip, &c., Mining Co.*, 43 Ch. D. 452; *Burdett-Coutts* v. *True Blue, &c., Gold Mine* [1899], 2 Ch. 616.

(*q*) *Burdett Coutts* v. *True Blue, &c., Gold Mine* [1899], 2 Ch. 616.

(*r*) *Zuccani* v. *Nacupai Gold Mining Co.*, 61 L. T. N. S. 180, and cases in note (*p*).

of the debts to be paid for by the liquidator of the selling company (*s*).

Liabilities of dissentients may not be increased.

But no transfer or sale under these sections can be valid as against dissentient shareholders if the terms of the transfer or sale are such as to expose them to increased liability (*t*); *e.g.*, where they are made to guarantee that their assets will yield a certain sum, or to pay by calls for shares in the new company. There is, however, no objection to the agreement, providing that a call shall be made and the proceeds be included in the assets sold (*u*); a sale upon the terms that the purchasing company shall pay the selling company's debts out of the assets purchased, and that if such assets are insufficient for the purpose the selling company will make good the deficiency out of calls to be made for the purpose, is not *ultra vires* (*x*).

Distribution of the proceeds of sale.

Nor again can the terms of the sale or transfer deal with the distribution of what may be agreed upon as the consideration for the sale, whether it be shares or money; it must be distributed, after payment of the debts and liabilities of the selling company, amongst the members according to their rights and interests in the company (*y*). But an agreement for sale which is otherwise valid is not rendered invalid as between the buying and selling companies because it contains invalid provisions for the distribution of the proceeds of the sale (*z*). Provision may be made for the payment of a proper compensation to the directors of the selling company out of the purchase-money (*a*); but if there is a provision to this effect the notice calling the meeting must refer to it (*aa*).

(*s*) *City and County Investment Co.*, 13 Ch. D. 475.

(*t*) *Clinch* v. *Financial Corporation*, 4 Ch. 117, and 5 Eq. 450, where the sale was set aside after it had been carried out. See, also, *Imperial Bank of China, &c.* v. *Bank of Hindustan*, 6 Eq. 91, and cases in next two notes.

(*u*) *New Zealand Gold Extraction Co.* v. *Peacock* [1894], 1 Q. B. 622.

(*x*) *Bank of South Australia* (2) [1895], 1 Ch. 578.

(*y*) *Griffith* v. *Paget*, 5 Ch. D. 894, and 6 Ch. D. 511; *Simpson* v. *Palace Theatre*, W. N. 1893, p. 91.

(*z*) *Wall* v. *London and Northern Assets Corp.* [1898], 2 Ch. 469; *Griffith* v. *Paget*, 5 Ch. D. 894. See, too, *North-West Argentine Rail. Co.* [1900], 2 Ch. 883.

(*a*) *Southall* v. *British Mutual Life Assur. Co.*, 6 Ch. 614. See further, as to allowances to directors, *ante*, pp. 539 *et seq.*

(*aa*) *Kaye* v. *Croydon Tramways Co.* [1898], 1 Ch. 359.

Bk. IV. Chap. 3.

Remedies for creditors and dissentients.

A sale duly carried out under these sections binds both creditors and dissentient members. If a creditor thinks himself injured by the transaction he must apply within a year to have the company wound up either by the Court or subject to its supervision (*b*). This will avoid the transaction unless sanctioned by the Court (*c*). The remedy for a dissentient member is to express his dissent in writing addressed to the liquidators and left at the registered office of the company not later than seven days after the passing of the special resolution; and he must further require the liquidators at their option either to abstain from carrying the resolution into effect or to purchase his interest (*d*).

Purchase of dissentients' interest.

If the liquidators elect to purchase the interest of a dissentient member, they should give him every facility for ascertaining its value (*e*); but he has no right to inspect the books of the selling company after they have been handed over to the purchasing company in order to see whether it would be better to accept the valuation of the liquidators or to go to arbitration (*f*). If the price cannot be agreed upon it must be settled by arbitration (*g*), and, if necessary, the Court will order a commission to issue for the examination of witnesses abroad (*h*). As soon as the price has been fixed an action may be brought against the company for the amount (*i*).

Dissentients cannot be deprived of their rights.

A dissentient shareholder cannot be deprived of his rights under §§ 161 and 162 by the articles of association (*k*),

(*b*) *City and County Investment Society*, 13 Ch. D. 475.

(*c*) Ib., and § 161, *i.e.*, sanctioned by an order made in the compulsory winding up, or in the winding up subject to supervision: *Callao Bis Co.*, 42 Ch. D. 169.

(*d*) The notice of dissent must contain a notice requiring the liquidators either to abstain from carrying the resolution into effect or to purchase the dissentient's share: *Union Bank of Kingston-upon-Hull*, 13 Ch. D. 808. See, too, as to sufficiency of notice, *London and Westminster Bread Co.*, W. N. 1890, p. 3.

(*e*) *Imperial Mercantile Credit Assoc.*, 12 Eq. p. 515.

(*f*) *Morgan's case*, 28 Ch. D. 620.

(*g*) A judge can appoint an umpire if the arbitrators do not agree: *ante*, p. 1189, note (*f*). As to costs, see *Imperial Mercantile Credit Assoc.*, 12 Eq. 504; as to the time within which an award must be made, see *Baring-Gould* v. *Sharpington, &c., Syndicate* [1899], 2 Ch. 80.

(*h*) *Mysore West Gold Mining Co.*, 42 Ch. D. 535.

(*i*) *De Rosaz* v. *Anglo-Italian Bank*, L. R. 4 Q. B. 462.

(*k*) *Semble*, the agreement referred to in § 162 is an agreement between

either directly, by an article expressly excluding such rights (*l*), or indirectly, by an article conferring upon the liquidator a power to sell on other terms (*m*). The sections, however, do not apply to a sale by a company under powers contained in its memorandum of association before it goes into liquidation, although the sale is made in contemplation of immediate liquidation (*n*).

If the liquidator proposes to distribute the proceeds of sale without making proper provision for the rights of dissentient shareholders, they can obtain an injunction to restrain him from so doing (*o*).

Omission to give notice of dissent in time.

With respect to those who do not give the proper notice in due time, it has been decided that although they cannot impeach the transfer, they cannot be compelled to become shareholders in the purchasing company; and if they are registered as shareholders therein against their consent, they are entitled to have their names removed from the register (*p*). Moreover, in the absence of a proper and timely notice a dissentient loses his right to have his interest purchased, and it is said that he also loses all right to any share of the surplus assets of the company being wound up (*q*). This share, if he were entitled to it, would be practically represented by the shares in the purchasing company, which he might have taken if he had chosen, and which he might require the liquidators to sell for his benefit if he had any right to them at all. The general opinion, however, seems to be adverse to his having any such right; his choice being to assent; or to dissent and require his interest to be purchased; or to dissent and abandon all his interest in the company (*r*).

the liquidator and the dissentient, see cases in two next notes.

(*l*) *Baring-Gould* v. *Sharpington, &c., Syndicate* [1899], 2 Ch. 80. See also, *Ex parte Fox*, 6 Ch. 176.

(*m*) *Payne* v. *Cork Company, Ld.* [1900], 1 Ch. 308.

(*n*) *Cotton* v. *Imperial and Foreign, &c., Corp.* [1892], 3 Ch. 454.

(*o*) See cases in notes (*l*) and (*m*), *ante*.

(*p*) *Higg's case*, 2 Hem. & M. 657; *Martin's case*, ib. 669; *Ex parte Los*, 11 Jur. N. S. 661. See, also, *Ex parte Fox*, 6 Ch. 176, and *Ex parte Bagshaw*, 4 Eq. 341; *Imperial Mercantile Credit Assoc.*, 12 Eq. 504.

(*q*) See *Higg's case*, 2 Hem. & M. 657. The marginal note, however, is scarcely warranted by the judgment.

(*r*) See *Higg's case*, 2 Hem. & M. 657; *Clinch* v. *Financial Corp.*, 5 Eq. pp. 472, 473; *Postlethwaite* v.

In a case where the business of a bank had been transferred under these sections, and dissentient shareholders presented a petition for a compulsory winding up, and impeached the validity of the resolution to wind up and of all the subsequent transactions, the Court gave them leave to take such proceedings as they might be advised in the name of the company in order to set aside the transactions complained of; but the Court declined to order the bank to be wound up compulsorily, or subject to the supervision of the Court, and also declined to decide on the petition what the rights of the dissentients were (*s*).

Liability of shareholders to creditors.

But a shareholder whose interest has been purchased by the liquidators under section 161 does not cease to be liable to the creditors of the company; the section not contemplating any alteration of liability as between the dissentient shareholder and the creditors whose debts are to be contributed to by all the shareholders (*t*).

Companies being wound up by the Court.

Where a company is already being wound up by the Court, these sections are not applicable, as they are expressly limited to a voluntary winding up (*u*). But the Court has as wide, if not wider, powers under § 95 of the Act, and in any case where it might seem desirable the Court could, it is conceived, effect an amalgamation by a sale under such last-mentioned section (*x*).

Life Insurance Companies.

The amalgamation and transfer of the business of life insur-

Port Phillip, &c., Mining Co., 43 Ch. 452; *Burdett-Coutts* v. *True Blue, &c., Gold Mine* [1899], 2 Ch. 616.

(*s*) *Imperial Bank of China, &c.*, 1 Ch. 339. Compare *Ex parte Fox*, 6 Ch. 176. As a rule, however, the Court will have regard to the wishes of the majority, of shareholders and creditors as against a dissentient minority, unless they will be exposed to liability, *Imperial Credit Assoc.*, 12 Eq. 504; *Ex parte Poole's executors*, 8 Ch. 702.

(*t*) *Vining's case*, 6 Ch. 96, where the liquidators had taken a transfer of the shares, which was not in fact authorised by the agreement they had to carry out; it seems, however, that under § 131 the liquidators may take a transfer of shares; the effect of which would be to relieve the shareholder from any *future* liability, not only with respect to the costs of the winding up, but any costs of any liabilities incurred by reason of the transaction in question. See *Ex parte Poole's executors*, 8 Ch. p. 710.

(*u*) It has, however, been held that they extend to a winding up under supervision. See *Imperial Mercantile Credit Assoc.*, 12 Eq. 504.

(*x*) See *Agra and Masterman's Bank*, 12 Eq. 509, note; and *ante*, p. 990.

ance companies is expressly provided for by the Life Assurance Companies Act, 1870 (*y*), §§ 14, 15. These sections are as follows:—

33 & 34 Vict. c. 61, §§ 14, 15.

14. Where it is intended to amalgamate two or more companies, or to transfer the life assurance business of one company to another, the directors of any one or more of such companies may apply to the Court, by petition, to sanction the proposed arrangement, notice of such application being published in the Gazette, and the Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may confirm the same if it is satisfied that no sufficient objection to the arrangement has been established.

Before any such application is made to the Court (*z*), a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which such amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which such agreement or deed is founded, shall be forwarded to each policy holder of both companies in case of amalgamation, or to each policy holder of the transferred company in case of transfer by the same being transmitted in manner provided by section one hundred and thirty-six of the Companies Clauses Consolidation Act, 1845, for the transmission to shareholders of notices not requiring to be served personally; and the agreement or deed under which such amalgamation or transfer is effected shall be open for the inspection of the policy holders and shareholders at the office or offices of the company or companies for a period of fifteen days after the issuing of the abstract herein provided.

The Court shall not sanction any amalgamation or transfer in any case in which it appears to the Court that policy holders representing one-tenth or more of the total amount assured in any company which it is proposed to amalgamate, or in any company the business of which it is proposed to transfer, dissent from such amalgamation or transfer.

No company shall amalgamate with another, or transfer its business to another, unless such amalgamation or transfer is confirmed by the Court in accordance with this section.

Provided always, that this section shall not apply in any case in which the business of any company which is sought to be amalgamated or transferred does not comprise the business of life assurance (*a*).

15. When an amalgamation takes place between any companies, or when the business of one company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within ten days from the date of the completion of the amalgamation or transfer, deposit with the Board of Trade certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the amal-

(*y*) 33 & 34 Vict. c. 61.

(*z*) See *Briton Life Assoc.*, W. N. 1887, p. 122.

(*a*) See *Argus Life Assur. Co.*, 39 Ch. D., which was the case of a petition under this section.

gamation or transfer and a certified copy of the agreement or deed under which such amalgamation or transfer is effected, and certified copies of the actuarial or other reports upon which such agreement or deed is founded; and the statement and agreement or deed of amalgamation or transfer shall be accompanied by a declaration under the hand of the chairman of each company and the principal managing officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the said amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities, or other property by or with the knowledge of any parties to the said amalgamation or transfer.

It has been decided that these sections do not confer upon an insurance company a power to transfer its business to another company, and that, assuming the existence of a power of transfer, they only contemplate the transfer of the whole of the assurance business, without any reduction in the policies or any fresh contracts with the policy holders (*b*).

The effect of the amalgamation of life insurance companies on their policy holders has been already pointed out (*c*).

Cost-book companies.

The amalgamation of companies working mines within the Stannaries is dealt with by 50 & 51 Vict. c. 43, § 27, which enacts—

50 & 51 Vict. c. 43, § 27.

When the limits of any mine join those of any other mine the companies respectively working the said mines may, with the consent in writing of the respective lessors thereof in all cases where such consent is by law or custom necessary, amalgamate and become one company, provided that no such amalgamation shall take place unless each of the said companies shall authorise the same by a special resolution, to which two-thirds in value of the shareholders in the said company shall consent in writing; such resolution shall be registered in the Court, and the amalgamation shall not take effect until such registration, and shall be advertised in such manner as the Court directs.

The Act, however, contains no definition of amalgamation; nor are there any provisions dealing with the rights of dissentients; and although the resolution authorising the amalgamation requires to be registered in the Court, it does not appear that the Court has any discretion as to withholding the registration if it is duly sanctioned.

(*b*) *Sovereign Life Ass. Co.*, 42 Ch. D. 540.

(*c*) See *ante*, pp. 369 *et seq.* and pp. 1023 *et seq.*

The effect of amalgamation on the debts of the amalgamating companies has been already discussed (*d*).

Building and industrial and provident societies.

The union or amalgamation of building societies is governed by the Building Societies Acts, 1874 (§ 33), 1877 (§ 5), and 1894 (§ 19), and of registered industrial and provident societies by the Industrial and Provident Societies Act, 1893 (§§ 53 and 54).

Reconstruction.

Where a company wishes to alter the nature of its business or effect anything which is *ultra vires*, and which cannot be authorised by an alteration of its constitution under powers conferred upon it, recourse is commonly had to reconstruction. Reconstruction differs from amalgamation in that, as a rule, there is only one transferring company, and the company to which the property in question is transferred is practically the same company, with some alterations in its constitution. In point of law, the two companies are, however, distinct persons.

The method of proceeding to a reconstruction is similar to that described above in cases of amalgamation. The most usual way of proceeding is under §§ 161 and 162 of the Companies Act, 1862, a new company being formed to take over the assets and liabilities of the old company.

"Liquidation."

If a company passes resolutions for a voluntary winding up with a view to a reconstruction, it "enters into liquidation" within the meaning of those words in a proviso for re-entry contained in a lease (*e*).

(*d*) See *ante*, pp. 368 *et seq.* and 1020 *et seq.* As a rule, a person who becomes surety to a corporation for the conduct of one of its servants is discharged by the amalgamation of that corporation with another. See *The Eastern Union Rail. Co.* v. *Cochrane*, 9 Ex. 197, and *L. B. & S. C. Rail. Co.* v. *Goodwin*, 3 Ex. 320, where the surety was not discharged; but the statute amalgamating the two contained an express provision on the subject.

(*e*) *Ewart* v. *Fryer* [1901], 1 Ch. 499; *Horsey Estate, Ld.* v. *Steiger* [1899], 2 Q. B. 79.

CHAPTER IV.

ON THE ABANDONMENT OF RAILWAYS, AND THE WINDING UP AND DISSOLUTION OF RAILWAY COMPANIES.

Bk. IV. Chap. 4.

THE last winding-up Acts to which it is necessary to advert, are, "The Abandonment of Railways Act, 1850" (*a*), "The Railway Companies Act, 1867" (*b*), and "The Abandonment of Railways Act, 1869" (*c*).

1. *Abandonment of Railways.*

The first of these Acts was passed in 1850, and only applied to railway companies incorporated by Act of Parliament, and empowered to make a railway by an Act passed before the 14th of August, 1850 (*d*).

Other railways, incorporated by Act of Parliament, could, until the passing of the Railway Companies Act, 1867 (*e*), only be wound up (if at all) under 7 & 8 Vict. c. 111 (*f*). The Railway Companies Act, 1867, amended the Act of 1850, and extended the operation of it to all companies authorised to make railways by any Act passed before the session 30 & 31

(*a*) 13 & 14 Vict. c. 83.

(*b*) 30 & 31 Vict. c. 127.

(*c*) 32 & 33 Vict. c. 114. Lord Dalhousie's Act (9 & 10 Vict. c. 28), which applied only to unincorporated railway companies projected before July, 1846, has ceased to be of any practical importance. See, upon it, *Jones* v. *Charlemont*, 16 Sim. 271; *Coupland* v. *Challis*, 2 Ex. 682; *Owen* v. *Challis*, 6 C. B. 115; and *Ex parte Clarke*, 12 Jur. 471; and *Ex parte Green*, ib. 534, and 13 ib. 775, as to proof of debts.

(*d*) 13 & 14 Vict. c. 83, § 1. As to its retrospective operation, see *Mackenzie* v. *Sligo, &c., Rail. Co.*, 18 Q. B. 862.

(*e*) 30 & 31 Vict. c. 127.

(*f*) Whether railway companies incorporated by special Act, were within 7 & 8 Vict. c. 111, was doubtful. See *Bright* v. *Hutton*, 3 H. L. C. 366; *Ex parte Burge*, 1 De G. & S. 588; *Ex parte Spackman*, ib. 599. Such companies were expressly excepted from the Winding-up Acts, 1848-9. See as to the Companies Act, 1862, *Ennis and West Clare Rail. Co.*, 3 L. R. Ir. 94, and *ante*, p. 156.

Vict. (1867). These Acts were amended by the Abandonment of Railways Act, 1869 (*g*).

The joint effect of the three Acts with respect to the abandonment of railways is in substance as follows:—

If any company authorised to make a railway by Act of Parliament passed before the session 30 & 31 Vict. (1867) (*h*) desires to abandon the railway in whole or in part, the company may, by the authority and with the consent of the holders of three-fifths of its shares or stock apply to the Board of Trade (*i*) for liberty to abandon the same (*k*). If less than three-fifths of the share capital of the company has been subscribed, the Board of Trade may, if it think fit, without the preliminary consent of a meeting of the shareholders, proceed under the Act of 1850, on the application of any person named in the special Act as a member or director, or of any person named in a warrant or order directing payment of any deposit, or who has lent the deposit or any part thereof, or who has entered into any bond conditioned for the completion of the railway, or for payment of any money in default thereof (*l*), or in the case of a company, no part of whose railway is open for traffic, on the application of a judgment creditor (*m*).

If the Board of Trade entertains the application, the fact of its having been made must be publicly notified by the company in the manner directed by the Act, so that persons desirous of opposing the application may have an opportunity of doing so (*n*). After due notice has been given and the time thereby fixed for opposing the application has expired, the Board of Trade may by warrant under seal, and signed by two or more of the members of the board, authorise the abandonment of the railway, or the portion of it described in the warrant, as the board may think fit (*o*). The warrant is required to be advertised (*p*); and after it has been duly advertised (of which a

(*g*) 32 & 33 Vict. c. 114.

(*h*) 30 & 31 Vict. c. 127, § 31.

(*i*) These powers were originally vested in the commissioners of railways, but were transferred to the Board of Trade by 13 & 14 Vict. c. 83, § 1.

(*k*) 13 & 14 Vict. c. 83, § 1.

(*l*) 30 & 31 Vict. c. 127, § 32.

(*m*) 32 & 33 Vict. c. 114, § 8.

(*n*) 13 & 14 Vict. c. 83, § 13.

(*o*) Ib. § 15.

(*p*) Ib. § 17, as amended by 32 & 33 Vict. c. 114, § 9.

certificate of the Board of Trade is sufficient evidence (*q*)), the company is released from the obligation of making the abandoned railway (*r*). The Acts contain various provisions for regulating the manner in which the sense of the shareholders is to be taken (*s*); for prohibiting the directors from proceeding with the undertaking after a resolution has been passed to apply to the Board of Trade (*t*); for enabling the Board to ascertain the true state of the company's affairs (*u*); for protecting and compensating persons who have acquired rights against the company (*x*); for reducing the capital of the company if the Board of Trade think it expedient so to do (*y*); and for dealing with the money deposited for the purpose of securing the completion of the railway (*z*).

The exercise of the powers of the Board of Trade is discretionary (*a*).

Warrant for abandonment.

Upon the granting of a warrant for the abandonment of a railway, the powers of the company cease; and the company exists only for the purpose of winding up its affairs (*b*).

Petition to wind up.

When a warrant has been granted for the abandonment of the whole of a railway, a petition may be presented under the Companies Acts of 1862 and 1867, either by the company or by any person who, under the Companies Acts, is authorised to present a petition to wind up a company (see *ante*, p. 841), or by any person upon whose application the Board of Trade may proceed in pursuance of 30 & 31 Vict. c. 127, § 32 (*c*); and for the purpose of the winding up the company shall be deemed an unregistered company, which may be wound up under the Companies Acts (*d*).

(*q*) 13 & 14 Vict. c. 83, § 18.

(*r*) Ib. § 19.

(*s*) Ib. §§ 2–11.

(*t*) Ib. §§ 4 and 12.

(*u*) Ib. § 14.

(*x*) Ib. §§ 16, 19-28, 35 and 36. § 35 is amended by 30 & 31 Vict. c. 127, § 31, by substituting 21st May, 1867, for 11th Feb. 1850.

(*y*) Ib. § 28.

(*z*) Ib. § 31, cl. 3, 32 & 33 Vict. c 114, § 5. See *Waterford, &c., Rail. Co.*, Ir. Rep. 4 Eq. 538, as to the rights of the depositors.

(*a*) 30 & 31 Vict. c. 127, § 31, cl. 3.

(*b*) 13 & 14 Vict. c. 83, § 29, amended by 32 & 33 Vict. c. 114, § 10, now repealed 46 & 47 Vict. c. 39.

(*c*) The substance of which is given, *ante*, p. 1213.

(*d*) 32 & 33 Vict. c. 114, § 4.

Application of deposit.

Under the joint operation of these Acts and special Acts, the deposit money might usually have been applied in compensating landowners for loss occasioned by the abandonment of the undertaking (*e*); and in paying meritorious creditors, that is, creditors whose claims arose outside and independently of the promotion of the company, if the money to pay them could not be raised by calls (*f*); but before the Act referred to below, the deposit was not applicable to the payment of "non-meritorious" creditors, *i.e.*, promoters, parliamentary agents, and people employed in the promotion of the company (*g*).

Parliamentary Deposits and Bonds Act, 1892.

Now by the Parliamentary Deposits and Bonds Act, 1892 (*h*), where any deposit has been made to secure the completion by any company of any undertaking authorised by Parliament, or any certificate issued under the authority of an Act of Parliament, and the undertaking has not been completed within the time limited (*i*), the High Court may, notwithstanding anything in the general or special Act, order the deposit to be applied towards compensating landowners injured by the commencement, construction, or abandonment of the undertaking, or in consequence of the compulsory powers (*k*) of taking property; and in the case of a tramway company, in compensating the road authorities. Subject to the payment of such compensation, and notwithstanding any provision as to forfeiture to the Crown, the Court may, if a receiver has been appointed, or the company is insolvent, and has been ordered to be wound up (*l*), or the undertaking has

(*e*) *Ruthin and Cerrig-y-Druidion Rail. Act*, 32 Ch. D. 438; *Potteries, Shrewsbury and North Wales Rail. Co.*, 25 Ch. D. 251.

(*f*) *Bradford Tramways Co.*, 4 Ch. D. 18, and the next note.

(*g*) See as to promoters, &c., *Birmingham and Lichfield Junction Rail. Co.*, 28 Ch. D. 652; *Lowestoft and Yarmouth Tramways Co.*, 6 Ch. D. 484; *Barry Rail. Co.*, 4 Ch. D. 315; *Bramptown and Longtown Rail. Co.*, 10 Eq. 613. A solicitor and parliamentary agent was paid in *Kensington Station Act*, 20 Eq. 197; but query this case, see *ante*, 197, note (*u*), and the cases just cited.

(*h*) 55 & 56 Vict. c. 27. Under § 2 money secured by bond is applicable in the same manner as the deposit.

(*i*) The jurisdiction does not arise until this time has expired; *Ex parte Chambers* [1893], 1 Ch. 47.

(*k*) *I.e.*, the exercise of such powers; merely giving a notice to treat is not sufficient; see *Uxbridge and Rickmansworth Rail. Co.*, 43 Ch. D. 536.

(*l*) A special Act enacting that the company shall wind up its affairs may be an order to wind up

been abandoned, order the deposit to be paid to the receiver or to the liquidator, or to be applied as part of the assets of the company for the benefit of its creditors. Subject to such application, the Court may, after such public notice as seems reasonable (*m*), order the deposit to be repaid to the depositors or those claiming under them. Deposits made before the 31st March, 1892, and not claimed by the depositors within ten years after the passing of the Act, may be applied in reduction of the National Debt.

All creditors of the company, whether meritorious or non-meritorious (*n*), and whether creditors of the particular undertaking which has been abandoned or not (*o*), are within the Act, and entitled to priority over the depositors and those claiming under them. If the company is a total failure, and has never had any existence beyond its statutory incorporation, it may be that no one is entitled to claim as a creditor (*p*). Moreover the Act does not make the deposit general assets of the company, but only assets for the benefit of its creditors; the deposit, therefore, is not liable to the general costs of winding up the company, though it is liable to the costs of the proceedings taken to obtain the fund for the creditor (*q*).

2. *Arrangements between railway companies and their creditors.*

In addition to the provisions relating to the abandonment of railway undertakings noticed above, the Railway Companies Act, 1867 (*r*), contains provisions relating to railway companies

within the section; see *Uxbridge and Rickmansworth Rail. Co.*, 43 Ch. D. 536.

(*m*) The Court has an absolute discretion on this point; see *Hull, Barnsley, &c., Rail. Co.*, W. N. 1893, p. 83.

(*n*) *Bradford and District Tram. Co.* [1893], 3 Ch. 463; *Hull, Barnsley, &c., Rail. Co.*, W. N. 1893, p. 83; *Manchester, Middleton, &c., Tram. Co.* [1893], 2 Ch. 638. As to when a solicitor or parliamentary agent employed in the promotion of a company is a creditor of the company, see [1893], 2 Ch. 638, and *ante*, pp. 196, 197.

(*o*) *Bradford and District Tram. Co.* [1893], 3 Ch. 463.

(*p*) *Manchester, Middleton, &c., Tram. Co.* [1893], 2 Ch. 638.

(*q*) *Colchester Tram. Co.* [1893], 1 Ch. 309.

(*r*) 30 & 31 Vict. c. 127.

unable to meet their engagements with their creditors. Until this Act was passed, railway companies, which had exhausted their capital and powers of borrowing, and were desirous of raising further capital to meet their engagements, were compelled to apply to Parliament for a special Act conferring further powers of raising money. Parliament, in dealing with these applications, was in the habit of considering how far the arrangements proposed as to the new capital were assented to or dissented from by the proprietors of the existing capital of the company. The object of the Railway Companies Act, 1867, is to dispense with special applications to Parliament, and to give a parliamentary sanction to a scheme approved by the Chancery Division of the High Court, and assented to by certain majorities of the various classes of persons interested in the undertaking (*s*). The Act provides that where a railway company (*t*) is unable to meet its engagements, the directors may prepare a scheme of arrangement between the company and its creditors, and may file such scheme in Court (*u*). After the filing of the scheme, and until its enrolment as directed in a subsequent section of the Act, the Court may, on the application of the company, restrain any action against the company (*x*), whether by persons bound by the scheme, or by those not so bound (*y*). The Court, however, in the exercise of its discretion, will not suspend the proceedings of any outside creditor, unless the scheme proposed will, if it reaches maturity, afford a reasonable prospect of providing for the payment of the claims of creditors, and thus compensate them for a temporary suspension of their remedies (*z*), nor

(*s*) See *Cambrian Rail Co.*, 3 Ch. 278, 294.

(*t*) For definition of the word "Company," see § 3. The railway may be only a subordinate part of the company's undertaking, see *Great Northern Rail. Co.* v. *Tahourdin*, 13 Q. B. D. 320, and *East & West India Docks Co.*, 38 Ch. D. 586. A tramway company is not a railway, *Borough of Portsmouth Tram. Co.* [1892],2 Ch. 362; *Brentford and Isleworth Tramways Co.*, 26 Ch. D. 527. These were not, however, decisions on the Act in question. See, too, *ante*, p. 156.

(*u*) § 6. See, too, *Potteries, &c., Rail. Co.*, 5 Ch. 67.

(*x*) § 7.

(*y*) *Cambrian Rail. Co. Scheme*, 3 Ch. 278.

(*z*) See *per* V.-C. Giffard, in *Bristol and North Somerset Rail. Co.*, 6 Eq. 448, 453. In *Letterkenny Rail. Co.*, Ir. Rep. 4 Eq. 538, the Court declined to sanction a scheme

will it compel creditors to accept securities instead of money in payment of their debts, except with their consent (*a*).

Notice of the scheme is directed to be published in the "Gazette" (*b*), and after such publication no process against the company is available without leave of the Court (*c*). The power to restrain such process comes to an end when the scheme has been either sanctioned or refused (*d*). After the filing of the scheme, or within such extended time as the Court has allowed, the directors may apply to the Court to confirm the scheme. Notice of that application must, however, be published in the "Gazette" (*e*).

Assents to scheme.

The scheme is to be taken to be assented to by the holders of mortgages, or bonds, or debenture stock (*f*), by holders of rent-charges (*g*) and by preference shareholders (*h*) respectively, when it is assented to in writing by three-fourths in value of the class in question; and by the ordinary shareholders of the company, when it is assented to at an extraordinary general meeting of the company specially called for that purpose (*i*). If the ordinary shares have been divided into preferred and deferred half shares, the holders of the preferred half shares do not form a class of preference shareholders whose separate assent must be obtained (*k*). If the company is a lessee of a railway, the scheme is to be taken to be assented to by the lessors, if three-fourths in value of the holders of mortgages, bonds, and debenture stock, and of each class of preference shareholders in the leasing company have given their assent in writing to the scheme, and if the ordinary

which made no provision for paying the creditors of the company.

(*a*) *West Cork Railway*, Ir. Rep. 7 Eq. 96; and cases in note (*z*).

(*b*) § 8.

(*c*) § 9. A *sci. fa.*, against a shareholder under the Companies Clauses Act, 1845, § 36, may be restrained under this section. *Devon and Somerset Rail. Co.*, 6 Eq. 610.

(*d*) *East and West India Dock Co.*, 44 Ch. D. p. 49; *Potteries, &c., Rail. Co.*, 5 Ch. 67.

(*e*) § 16.

(*f*) § 10. A debenture holder who has obtained judgment is, for the purposes of this sect., precisely in the same position as those who have not. *Potteries, &c., Rail. Co.* v. *Minor*, 6 Ch. 621.

(*g*) § 11.

(*h*) § 12.

(*i*) § 13.

(*k*) *Brighton Dyke Rail. Co.*, 44 Ch. D. 28.

shareholders of the leasing company have, at an extraordinary general meeting, called for that purpose, assented to it (*l*).

Confirmation of scheme.

The Court may then confirm the scheme, upon being satisfied that it has been duly assented to by all the classes of interests mentioned above (*m*). If the existing rights of any such class are prejudicially affected by the scheme, the Court cannot dispense with their assent (*n*). Unsecured creditors will be heard in opposition (*o*), and the scheme will not be sanctioned if it purports to bind them (*p*), or if it is unfair to them (*q*).

Enrolment of scheme.

The scheme when confirmed must be enrolled in the Chancery Division of the High Court, and then becomes as effectual as an Act of Parliament (*r*); and in the absence of fraud (*s*) the scheme, when enrolled, binds the company, and all the persons whose assents were necessary to it; but it does not bind any outside creditor unless he has actually assented to it (*t*). After the enrolment no appeal can be made against the order confirming the scheme (*u*); but in order to prevent an appeal from being defeated, the Court will suspend the enrolment (*u*). Upon the enrolment the summary powers given to the Court by §§ 7 and 9 cease; and afterwards no injunction can be obtained by the company to restrain proceedings against it except in an action (*x*).

(*l*) § 14.

(*m*) § 17. There is no clause expressly requiring all these assents, but § 15 implies that they are necessary. See *The Cambrian Rail. Co.'s Scheme*, 3 Ch. 278, 284, V.-C. Wood's judgment.

(*n*) See § 15 and *Neath and Brecon Rail. Co.* [1892], 1 Ch. 349.

(*o*) *East and West India Dock Co.*, 44 Ch. D. 38.

(*p*) *Bristol and North Somerset Rail. Co.*, 6 Eq. 448.

(*q*) *East and West Junction Rail. Co.*, 8 Eq. 87; *Somerset & Dorset Rail. Co.*, 18 W. R. 332. The Somerset and Dorset scheme was ultimately confirmed, the opposition being withdrawn by nearly all who originally opposed, see 44 Ch. D. p. 46, and Registrar's Book, 1870.

(*r*) § 18.

(*s*) *East and West Junction Rail. Co.*, 8 Eq. 87.

(*t*) *Cambrian Rail. Co. Scheme*, 3 Ch. 278; *Bristol and North Somerset Rail. Co.*, 6 Eq. 448; *East and West Junction Rail. Co.*, 8 Eq. 87, 91; *Stevens* v. *Mid Hants Rail. Co.*, 8 Ch. 1069; and compare *Navan and Kingscourt Rail. Co.*, 17 L. R., Ir. 410. See, also, *Re Stevens*, Ir. Rep. 6 Eq. 604, where a judgment creditor and statutory mortgagee of the company was held not bound by its scheme, though duly confirmed by the Court.

(*u*) *Devon and Somerset Rail. Co.* 6 Eq. 615, 618.

(*x*) *Potteries, &c., Rail. Co.*, 5 Ch. 67; *East and West India Dock Co.*, 44 Ch. D. p. 49.

The confirmation and enrolment of the scheme must be published in the "Gazette" (*y*).

The practice of the Court under this Act is regulated by the General Order and Rules, dated 24th January, 1868 (*z*), which, however, it has not been considered necessary to print in the present treatise.

(*y*) § 19.

(*z*) These rules are issued under the authority given by § 22. They will be found in Hodges on Railways, Volume II.

APPENDIX.

No. I.

FOREIGN COMPANIES.

Foreign companies.

Privileges of foreign companies.

IT is an established rule of private international law that a corporation duly created according to the laws of one state may sue and be sued in its corporate name in the Courts of other states (*a*). This rule was recognised by our own Courts in the case of *The Dutch West India Company* v. *Moses* (*b*), and since that decision there have been several instances of actions and suits instituted both by and against foreign incorporated companies (*c*).

But a corporation created by a government, not recognised by the Crown, cannot be recognised as a corporation by the Courts of this country (*d*).

Liability of members.

The individual members of a foreign incorporated company cannot be sued for the debts of the company contracted in another country where it carries on business (*e*). This was decided in the case of a company incorporated in Victoria and carrying on business in Western Australia, but not registered there: nor was it material that by the laws of that state the members of a native company which had never been registered were liable to be sued individually for the company's debts (*e*).

Use of name.

A foreign corporation may carry on business in this country in its corporate name, and, apart from dishonesty, cannot be restrained from doing so, even though its name is similar to that of an English company carrying on a similar business (*f*).

A foreign corporation may sue here by the name it has acquired by reputation (*g*).

Procedure in actions.

As regards procedure (*h*), and parties to actions, the law of the country in which the action is brought prevails; and consequently a company

(*a*) See Story, Conflict of Laws, § 565; 2 Kent's Com. p. 284, ed. 6.

(*b*) 1 Str. 611.

(*c*) See, for example, *Westman* v. *Aktiebolaget, &c., Fabrik*, 1 Ex. D. 237; *The National Bank of St. Charles* v. *Barnales*, 1 Car. & P. 569; *South Carolina Bank* v. *Case*, 8 B. & Cr. 427; *Lewis* v. *Baldwin*, 11 Beav. 153; *Sudlow* v. *Dutch Rhenish Rail. Co.*, 21 Beav. 43; *Maclaren* v. *Stainton*, 16 Beav. 279; *Mackenzie* v. *Sligo and Shannon Rail. Co.*, 8 Q. B. 862. As to actions for calls, see *Welland Rail. Co.* v. *Blake*, 6 H. & N. 410.

(*d*) *The City of Berne* v. *Bank of England*, 9 Ves. 347.

(*e*) *Bateman* v. *Service*, 6 App. Ca. 386, and see *infra*, p. 1227.

(*f*) *Saunders* v. *Sun Life Ass. Co. of Canada* [1894], 1 Ch. 537; and see *ante*, pp. 153, 154.

(*g*) *Dutch West India Co.* v. *Moses*, 1 Str. 611.

(*h*) See, as to service of writs, *infra*, p. 1224, and *ante*, pp. 374 *et seq.*

APPENDIX I.

Public officers.

empowered by a foreign or colonial government to sue and be sued by a public officer, cannot so sue or be sued here (*i*).

It has been decided that where a company formed in a colony is empowered by an Act of the Colonial legislature to sue and be sued by a public officer, and an action is brought against that officer in the colony, and judgment is recovered against him there, such judgment may be enforced in this country against a member of the company resident here, although he was not in fact party to the proceedings in the colony (*k*).

Contracts with foreign corporations in England.

Notwithstanding some Canadian decisions to the contrary (*l*), a foreign corporation can sue in this country on all contracts entered into with it in this country, provided such contracts are warranted by the constitution of the corporation and are not illegal by English law (*m*). The Canadian decisions are based on the theory, that as no state can validly authorise a body corporate to transact business out of its own territory, no corporation can sue in a foreign country on a contract entered into there. But the true question is, not whether one state can legally grant powers of contracting, &c., in another state, but to what extent does one state recognise the acts of another? The right of a foreign corporation to sue in this country is conferred by English law, and not by the law of the state creating the corporation. The right of a corporation to sue in a foreign country, as well as its right to contract in a foreign country, are both based, not on the law of the state creating the body corporate, but on the extent to which the foreign country chooses to recognise that law. It is curious, however, that this point should never have been discussed or formally decided in this country (*n*).

Calls.

Calls made under a Colonial Act are simple contract debts (*o*); and under the old practice never indebted might have been pleaded in an action for such calls (*p*).

(*i*) See *Alivon* v. *Furnival*, 1 Cr. M. & R. 277, where two out of three Syndics sued successfully, although it was objected that the other ought to have joined. A company empowered by a colonial statute to sue and be sued is not a corporation; *Aldridge* v. *Cato*, L. R. 4 P. C. 313, which see as to the construction of such a statute. See also *Bullock* v. *Caird*, L. R. 10 Q. B. 276, where one member of a Scotch firm was sued here on a contract made in Scotland with the firm.

(*k*) *Bank of Australasia* v. *Harding*, 9 C. B. 661; *Bank of Australasia* v. *Nias*, 16 Q. B. 717; *Kelsall* v. *Marshall*, 1 C. B. N. S. 241.

(*l*) *Bank of Montreal* v. *Bethune*, 4 Up. Can. Q. B. 341; *Genesee Mutual Ins. Co.* v. *Westman*, 8 ib. 487; *Union Rubber Co.* v. *Hibbard*, 6 Up. Can. C. P. 77. If carefully examined, these cases only decide what is unquestionably true, viz., that a corporation formed to carry on a particular business in one country exceeds its powers if it carries on a similar business out of that country. At the same time the judges who decided those cases based their judgments on supposed grounds of international law.

(*m*) See acc. *Bank of Augusta* v. *Earle*, 13 Peters, 519; and the recent cases on policies for the insurance of gold seized by the late Transvaal Government, *Robinson Gold Mining Co.* v. *Alliance Ins. Co.* [1901], 2 K. B. 919; *Nigel Gold Mining Co.* v. *Hoade*, ib. 849; and *Driefontein Consolidated Mines* v. *Janson*, ib. 419.

(*n*) It was assumed in *Newby* v. *Van Oppen*, L. R. 7 Q. B. 293, and in the three last cases in note (*m*). See, too, *Saunders* v. *Sun Life Ass. Co. of Canada* [1894], 1 Ch. 537.

(*o*) *Welland Rail. Co.* v. *Blake*, 6 H. & N. 415.

(*p*) Ib.

Residence of companies.

The residence and domicil of an incorporated company are determined by the situation of its principal place of business. This is not only the opinion of the most recent writers on private International law (*q*), but is supported by the decisions of our own Courts (*r*). By the principal place of business is meant the place where the administrative business of the company is conducted; this may not be where its manufacturing or other business operations are carried on (*s*).

Residence of registered companies.

A company registered under the Companies Act, 1862, is for all the purposes of that Act, resident in that part of the United Kingdom in which the company's registered office is situate (see §§ 8—10); and for the purpose of determining the Court in which an unregistered company is to be wound up under that Act, the company is to be treated as registered in that part of the United Kingdom in which its principal place of business is situate (see § 199) (*t*).

Residence for purposes of income tax.

As regards payment of income tax, it has been decided that income tax is payable by a company registered in this country and managed by a board of directors meeting here on the whole of its profits, whether earned in this country or abroad, and not only on so much of them as are received in England (*u*); but that foreign companies carrying on business here are only assessable in respect of their profits earned here (*x*), or remitted here for division amongst the shareholders (*y*). These cases turn on the language of the income tax Acts, and illustrate the meaning of reside and carry on business as applied to companies and their agents.

Jurisdiction over foreign companies.

But although a foreign company may have its principal place of

(*q*) See Dicey on Conflict of Laws, pp. 154 *et seq.*; Foote on Int. Law, 2nd ed. pp. 112 *et seq.*; 4 Phill. Int. Law, pp. 128, 129, 138. But see Westlake, Priv. Int. Law, 3rd ed. pp. 332 *et seq.*

(*r*) In *Taylor* v. *Crowland Gas Co.*, 11 Ex. 1; *Adams* v. *The Great Western Rail. Co.*, 6 H. & N. 404; and *Shields* v. *The Great Northern Rail. Co.*, 7 Jur. N. S. 631, it was held that a company dwells (in the sense in which the word is used in the County Court Acts) at its principal place of business, *e.g.*, in the case of the Great Western Rail. Co. at Paddington. Again, in *Minor* v. *The London and North-Western Rail. Co.*, 1 C. B. N. S. 325, and *Corbett* v. *The General Steam Navigation Co.*, 4 H. & N. 482, it was held that a company, whose principal place of business was in London, but which had an office in a country town, did not carry on business there within the meaning of the same Acts. See also, *Le Tailleur* v. *South-Eastern Rail. Co.*, 3 C. P. D. 18; *Keynsham Blue Lias Lime Co.* v. *Barker*, 2 H. & C. 729. And as to residence for purposes of service of writs, see *infra*, p. 1224, note (*f*).

(*s*) See the cases in the last note, and in the next two notes.

(*t*) *Jones* v. *Scottish Accident Ass. Co.*, 17 Q. B. D. 421, noticed *infra*, and see the next note.

(*u*) *San Paulo Brazilian Rail. Co.* v. *Carter* [1896], A. C. 31; *Bank of Mexico* v. *Apthorpe* [1891], 2 Q. B. 378. *Gresham Life Ass. Soc.* v. *Bishop* [1901], 1 Q. B. 153. *Cesena Sulphur Co.* v. *Nicholson*, and *Calcutta Jute Mills Co.* v. *Nicholson*, 1 Ex. D. 428; *Alexandria Water Co.* v. *Musgrave*, 11 Q. B. D. 174. *Secus*, if it does not carry on a trade at all, *Bartholomay Brewery Co.* v. *Wyatt* [1893], 2 Q. B. 499. See *ante*, pp. 612, 613.

(*x*) *Att.-Gen.* v. *Alexander*, L. R. 10 Ex. 20; *Werle & Co.* v. *Colquhoun* 20 Q. B. D. 753.

(*y*) *Gilbertson* v. *Fergusson*, 7 Q. B. D. 562, also, *Colquhoun* v. *Brooks*, 14 App. Ca. 493, affirming 21 Q. B. D. 52, and reversing 19 ib. 400, as to profits remitted from a firm abroad to a partner here.

APPENDIX I.

Jurisdiction over foreign companies.

business abroad, and be therefore domiciled abroad, it may be sued in the Courts of this country if it is in fact amenable to the process of our Courts. There is no difference in this respect between a foreign individual and a foreign corporation, except that the individual may be amenable to process both in his person and in his property, whilst a corporation domiciled abroad can, it is conceived, only be amenable to process through its property and its agents. In neither case, however, does the simple fact of a foreign domicil exclude the jurisdiction (z).

The jurisdiction of English Courts over foreign companies was discussed in *Norris* v. *Chambres*, 29 Beav. 246, aff. on appeal, 7 Jur. N. S. 689, in which it was held that a mere lien on property situate abroad cannot be enforced here, unless such lien is founded on some contract or transaction creating a personal obligation on the part of the defendant in favour of the plaintiff.

The question whether a foreign company having its principal place of business abroad, but having an agent and an office for the sale of its goods here, was within the jurisdiction of the English Courts, was much discussed in *The Carron Company* v. *Maclaren* (a); and although in that case there was a difference of opinion as to the propriety of making a decree against the company, there appears to have been no difference of opinion as to the mere question of jurisdiction.

Companies formed in this country, for the purpose of carrying on business abroad, but having their principal place of business here, are clearly subject to the jurisdiction of English Courts (b); and may be wound up in this country (c).

The jurisdiction of the Courts of one country over companies domiciled in another country, appears therefore to depend upon whether those companies are, through their property or their agents, amenable to the process of the Courts in which the companies are sued. Assuming a foreign company to be amenable to the process of our Courts, there is nothing to prevent its being sued or even adjudicated bankrupt here, if it could be so adjudicated were it an English company (d).

Service on foreign companies.

Service of writs on corporations is governed by the Rules of the Supreme Court, 1883, Order IX. r. 8 (e). This rule is applicable to foreign corporations carrying on business and having an office in this country in such a manner as to constitute residence here for the purpose of founding jurisdiction (f). A foreign corporation not so resident here

(z) See *Maclaren* v. *Stainton*, 16 Beav. 279, and the judgment of Lord St. Leonards, 5 H. L. C. 450.

(a) 5 H. L. C. 416; *Maclaren* v. *Stainton*, 16 Beav. 279, and the cases in note (f).

(b) See *Buenos Ayres Rail. Co.* v. *North Rail. Co. of Buenos Ayres*, 2 Q. B. D. 210, where an action was held to lie for rent of land abroad; *Madrid and Valencia Rail. Co.*, 3 De G. & S. 127, and 2 Mac. & G. 169; *Butt* v. *Monteaux*, 1 K. & J. 98.

(c) *Princess Reuss* v. *Bos*, L. R. 5 H. L. 176.

(d) See, as to bankruptcy, *Royal Bank of Scotland* v. *Cuthbert*, 1 Rose, 462; *Forth Marine Ins. Co.*, 9 Beav. 469, and *Ex parte André Châle*, 24 Q. B. D. 640, when a foreign firm was adjudicated bankrupt here after an adjudication in France.

(e) See Annual Practice, and *ante*, p. 375.

(f) See where the corporation was held to be resident in this country for this purpose, *Dunlop Pneumatic Tyre Co., Ld.* v. *Actien Gesellschaft, &c., Cudell & Co.*, W. N. 1902, p. 8; *La Bourgoyne* [1899], A. C. 431, affirming [1899], P. 1. *Haggin* v. *Comptoir D'Escompte de Paris*, 23 Q. B. D.

may be sued in the same way as an individual foreigner resident out of the jurisdiction, and leave to issue a writ and to serve notice of it out of the jurisdiction may be given in a proper case (*g*). A Scotch Insurance Company registered in Scotland, but having an agency and a chief office in England, and issuing policies here, was held not to be domiciled or ordinarily resident in England so as to authorise the service of a writ on it in Scotland (*h*).

Winding up of foreign companies.

A foreign company cannot be registered as an existing company under the Companies Act, 1862 (*i*); nor can it be wound up under that Act unless it has a branch office (not merely agents) in England, and assets which an English Court can reach (*i*). Practically it would be impossible to wind it up completely; and if it were a corporation there would be no jurisdiction to dissolve it.

Pending winding up abroad.

The fact that a company is being wound up in the country of its domicil will not exclude the jurisdiction of the English Court, but the winding up here will, as a rule, be made ancillary to that in the country of its domicil (*k*).

Foreign liquidations.

Liquidation abroad in the country of the company's domicil, and even a discharge in such liquidation, is no defence to an action in this country on a contract made here and to be performed here (*l*). So, too, an arrangement in this country under the Joint Stock Companies Arrangement Act, 1870, an Act which does not apply to the colonies, cannot be pleaded by an English company in a colonial Court as a defence to an action by a non-assenting colonial creditor for the full amount of his claim (*m*).

Interference with foreign companies.

A foreign company which is amenable to the jurisdiction of the Courts of this country may be restrained from suing its own members in the courts of the country where its principal place of business is situate (*n*). But if disputes between the members, or between the company and strangers, have arisen and been the subject of litigation and been adjudicated upon by a foreign Court of competent jurisdiction, its decision will

519; *L'Loneux* v. *Hong Kong, &c., Co.*, 33 Ch. D. 446; *Newby* v. *Van Oppen*, L. R. 7 Q. B. 293, and where it was not, *Badcock* v. *Cumberland, &c., Co.* [1893], 1 Ch. 362, and *The Princess Clementine* [1897], P. 18, where there was only an agency here. As to Irish and Scotch companies governed by the Companies Acts or the Companies Clauses Acts, see *ante*, p. 376.

(*g*) R. S. C. Order XI. *Scott* v. *Royal Wax Candle Co.*, 1 Q. B. D. 404; *Westman* v. *Aktiebolaget, &c., Fabrik*, 1 Ex. D. 237.

(*h*) R. S. C. Order XI., r. 1 (c); *Jones* v. *Scottish Accident Ass. Co.*, 17 Q. B. D. 421.

(*i*) See Comp. Act, 1862, § 199; *Bulkeley* v. *Schutz*, L. R. 3 P. C. 764; *Lloyd Generale Italiano*, 29 Ch. D. 219, and compare *Matheson Brothers, Limited*, 27 Ch. D. 225; *Commercial Bank of South Australia*, 33 Ch. D. 174, and 36 ib. 522, and *ante*, p. 840. See also *Bateman* v. *Service*, 6 App. Ca. 386.

(*k*) *Commercial Bank of South Australia*, 33 Ch. D. 174; *English, Scottish, and Australian, &c., Bank* [1893], 3 Ch. p. 394; *Federal Bank of Australia*, W. N. 1893, p. 46. As to bankruptcy, see *Ex parte André Châle*, 25 Q. B. D. 640, where, however, the bankruptcy was not in the country of the domicile.

(*l*) *Gibbs & Sons* v. *Société des Metaux*, 25 Q. B. D. 399. As to what law governs in the case of a contract executed abroad, see *South African Breweries, Ld.* v. *King* [1899], 2 Ch. 173, affirmed [1900], 1 Ch. 273.

(*m*) *New Zealand Loan, &c., Co.* v. *Morrison* [1898], A. C. 349.

(*n*) *Carron Co.* v. *Maclaren*, 5 H. L. C. 416.

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not be reviewed here at the instance of a member resident here and not a party to the proceedings abroad (*o*).

It has also been decided that an application by a company to a foreign government for further powers ought not to be restrained by the Courts of this country (*p*).

Laws applicable to the transactions of foreign companies.

Again, although a corporation duly created in one state, is recognised as a corporation by other states, the transactions of that corporation are governed, not by the law of the state creating it, but by the law of the place where those transactions occur, and by the constitution of the corporation (*q*). This last is important; for the capacity of a corporation to acquire rights and incur obligations is limited by the objects to attain which it is created, and these limits must be regarded whenever and wherever the extent of the corporate powers has to be judicially decided (*r*). But it by no means follows that what a corporation can lawfully do in the state where it was created, it can also lawfully do in every other state which recognises its existence. This must always be borne in mind when, as frequently occurs, a company is formed here for the purpose of transacting business in the colonies or in foreign countries. Suppose, for example, that a registered company is formed in England for the purpose of working mines or cultivating estates in a colony. If, by the laws of that colony, a corporation cannot hold lands, the company will not be able to attain its object without obtaining special authority from the proper quarter to hold lands in the colony.

Dealings in shares.

The proper mode of transferring shares in a foreign incorporated company depends on the laws by which the company is incorporated. But foreign laws of estoppel do not govern transactions in this country; nor are documents which are treated abroad as negotiable instruments necessarily so treated here (*s*).

Probate duty on shares in foreign companies.

Certificates in this country of shares in a foreign company, marketable in this country, and operative by delivery, are liable to probate duty here (*t*). If an English company transfers shares registered in the name of a deceased

(*o*) See *Sudlow* v. *Dutch Rhenish Rail. Co.*, 21 Beav. 43; *Bank of Australasia* v. *Harding*, 9 C. B. 661, and v. *Nias*, 16 Q. B. 717; *Kelsall* v. *Marshall*, 1 C. B. N. S. 241. As to suits here and abroad concurrently, see *Bent* v. *Young*, 9 Sim. 180, and *Transatlantic Co.* v. *Pietroni*, Johns. 604; and as to the two suits being for the same matter, see *Hunter* v. *Stewart*, 10 W. R. 176, L. J.

(*p*) *Bill* v. *Sierra Nevada, &c., Co.*, 1 De G. F. & J. 177.

(*q*) In *Branley* v. *South-Eastern Rail. Co.*, 12 C. B. N. S. 63, a contract made by an English company in Boulogne, and valid by the law of France, was held valid, whatever might have been the case if the contract had been made in England. See, also, *Maunder* v. *Lloyd*, 2 J. & H. 718. It will be assumed in the absence of proof to the contrary, that general principles of commercial and mercantile law are the same abroad as here. *Pickering* v. *Stephenson*, 14 Eq. 322.

(*r*) See the *Canadian cases*, noticed *ante*, p. 1222, note (*l*).

(*s*) *Colonial Bank* v. *Cady*, 15 App. Ca. 267, and other cases noticed *ante*, pp. 665, 666, and *Picker* v. *London and County Banking Co.*, 18 Q.B.D.515. As to stamp duty on shares and securities of foreign companies, see Stamp Act, 1891, §§ 82–85, and Finance Act, 1899, §§ 4 and 6, *Brown Shipley & Co.* v. *Commrs. of Inland Rev.* [1895], 2 Q. B. 598, and *Lord Revelstoke* v. *Commrs. of Inland Revenue* [1898], A. C. 565.

(*t*) *Stern* v. *The Queen* [1896], 1 Q. B. 211. See, too, *In the Goods of Agnese* [1900], P. 60.

foreigner domiciled abroad, or pays the dividends on such shares to persons who, though his executors in the country of his domicil, have not taken out probate or letters of administration in this country, the company will be liable as executors *de son tort* for the duty which would have been payable in respect of such shares and dividends if probate or administration had been obtained in England (*u*).

Liabilities of the members of foreign companies.

One of the most important questions which arise with reference to foreign companies, relates to the personal liabilities of their members. If a company is incorporated by a foreign government, so that by the constitution of the company the members are rendered wholly irresponsible, or only to a limited extent responsible, for the debts and engagements of the company, the liability of the members, as such, will be the same in this country as in the country which created the corporation (*x*). But with respect to unincorporated companies, the measure of liability in respect of any given transaction, seems, upon principle, to depend upon the law of the place where the transaction in question occurred (*lex loci contractûs*). The law of agency, as administered in that place, would, it is conceived, have to be applied; and the law of the place where the company might be considered as domiciled would only be material for the purpose of determining the authority given by the members to the agents by whom the transaction in question was conducted. See, upon this difficult subject, *Story's Conflict of Laws*, § 320 *a*, and *Westlake's Private Intern. Law*, 1*st ed.* §§ 222 *et seq.*; *Maunder* v. *Lloyd*, 2 J. & H. 718.

Enforcing foreign judgments.

If a judgment has been obtained abroad against a company (*y*), or a member of a company (*z*), such judgment may be enforced here, although, by reason of service having been substituted or dispensed with, the judgment may have been obtained without actual notice to the defendant (*a*).

Goodwill.

The goodwill of a wholesale manufacturing business which is carried on abroad on premises situate abroad, and with customers resident abroad, is "property locally situate out of the United Kingdom" within the meaning of the Stamp Act, 1891 (*b*).

The following convention upon the subject to which this note relates has been concluded between England and France:—

Convention with France.

"Art. I. The high contracting parties declare that they mutually grant to all companies and other associations, commercial, industrial, or financial, constituted and authorised in conformity with the laws in force

(*u*) *New York Breweries Co.* v. *Att.-Gen.* [1899], A. C. 62, affirming [1898], 1 Q. B. 205, and reversing [1897], 1 Q. B. 738.

(*x*) *General Steam Nav. Co.* v. *Guillan*, 11 M. & W. 877. And see *Bateman* v. *Service*, 6 App. Ca. 386.

(*y*) *Sheehy* v. *Professional Life Ass. Co.*, 3 C. B. N. S. 579.

(*z*) See *Vallés* v. *Dumergue*, 4 Ex. 290. See, also, *Copin* v. *Adamson*, 1 Ex. D. 17, affirming L. R. 9 Ex. 345, where a French company had obtained judgment in France against an English member.

(*a*) Ib.; compare *Meeus* v. *Thelusson*, 8 Ex. 638; and *Schibsby* v. *Westenholz*, L. R. 6 Q. B. 155.

(*b*) § 59, sub-s. 1. *Commrs. of Inland Rev.* v. *Muller & Co.'s Margarine, Ld.* [1901], A. C. 217. As to the liability to stamp duty of an agreement made in England for the sale of a foreign patent, see *Smelting Co. of Australia* v. *Commrs. of Inland Revenue* [1897], 1 Q. B. 175, and of the benefit of a contract for the sale of land abroad, *Danubian Sugar Factories, Ld.* v. *Commrs. of Inland Revenue* [1901], 1 K. B. 245.

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in either of the two countries, the power of exercising all their rights, and of appearing before the tribunals whether for the purpose of bringing an action, or for defending the same, throughout the dominions and possessions of the other power, subject to the sole condition of conforming to the laws of such dominions and possessions.

"Art. II. It is agreed that the stipulations of the preceding article shall apply as well to companies and associations, constituted and authorised previously to the signature of the present convention, as to those which may subsequently be so constituted and authorised.

"Art. III. The present convention is concluded without limit as to duration. Either of the high powers shall, however, be at liberty to terminate it by giving to the other a year's previous notice. The two high powers, moreover, reserve to themselves the power to introduce into the convention, by common consent, any modifications which experience may show to be desirable."

and other countries.

Similar conventions have been made with Belgium (see Parl. Papers for 1862, vol. xxii. p. 1, and Hertslet's Commercial Treaties, vol. xi. p. 74), with Italy (see Parl. Papers for 1867—8, vol. lxxii. p. 533, and Hertslet, vol. xii. p. 1144), with Germany (see Parl. Papers for 1874, vol. lxxvi. p. 139, and Hertslet, vol. xiv. p. 374), with Spain (see Parl. Papers for 1883, vol. lxxxii. p. 659, and Hertslet, vol. xv. p. 1056), and with Greece (see Parl. Papers for 1888, C. 5556, and Hertslet, vol. xviii. p. 792); and as to Tunis, see Art. 16 of the Convention with that country (19th July, 1875), Hertslet, vol. xiv. p. 547, and as to foreign insurance companies in Austria, see the Austrian Law, 29th March, 1873, Hertslet, vol. xv. p. 9.

No. II.

INDUSTRIAL AND PROVIDENT SOCIETIES.

Nature and objects.

INDUSTRIAL and Provident Societies, governed by the Industrial and Provident Societies Act, 1893 (56 & 57 Vict. c. 39) (*a*), are a peculiar kind of limited joint-stock company. They are societies formed for the purpose of carrying on any industries, businesses, or trades authorised by their rules, whether wholesale or retail, including dealings of any description with land and banking, but subject to certain restrictions; but no member other than a registered Industrial and Provident Society can have a greater interest in the funds of the society than 200*l*. (§ 4). There must be seven members at least (§ 5 (1)); and subject to the rules of the society, infants over sixteen may be members (§ 32). Such a society is formed by being registered by the registrar of friendly societies (§§ 6, 7 and 79); and, when registered, it becomes a body corporate by its registered name, having a perpetual succession and a common seal, with power to hold lands and buildings, and with limited liability (§ 21). It can bind itself by promissory notes and contracts in the same way as companies registered under the Companies Act, 1862 (§§ 33 and 35). The acknowledgment of registry by the registrar is conclusive evidence that the society is duly registered, unless it is proved that the registry is suspended or cancelled (§ 8) (*b*).

Formation.

Registration of old societies.

Every incorporated society existing at the time of the passing of the Act, and registered or certified under any of the earlier Acts relating to Industrial and Provident Societies, is deemed to be registered under the present Act, and its rules, so far as they are not contrary to the express provisions of the Act, continue in force until altered or rescinded (§ 3). A society registered under the Act of 1852, and not registered under the later Acts, may obtain an acknowledgment of registry under the Act (§ 5 (4)).

Vesting of property.

Registration vests in the society all property that may at the time be vested in any person in trust for it (§ 21) (*c*).

Liability of members.

The society, being incorporated, must sue and be sued by its corporate name; and its members are individually liable for its debts and engagements only so far as the statute declares. As in the case of companies registered under the Companies Act, 1862, so in the case of societies registered under the Act now in question, the members are not liable to have executions issued against them in respect of judgments obtained against the society. The members can only be reached individually by the

(*a*) Amended by 58 & 59 Vict. c. 30, and as to Jersey by 57 Vict. c. 8. This Act repealed the earlier Act of 1876, 39 & 40 Vict. c. 45.

(*b*) As to appeals, if the registrar refuses to register, see § 7, amended by 58 & 59 Vict. c. 30, § 3.

(*c*) See *Queensbury Industrial Society* v. *Pickles*, L. R. 1 Ex. 1, a decision under the earlier Act.

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Provisions for protection of creditors.

process of winding up (*d*). For the protection of creditors, however, the society is bound to have a registered office (§ 11), with its name painted on the outside, and to use its name (§ 12), and the word limited as is required in the case of companies registered with limited liability, under the Companies Act, 1862 (§ 5 (5)), and to make certain annual returns to the registrar (§§ 14 and 15); and to have its accounts audited (§§ 13 and 16). A register of members is required to be kept, and is *primâ facie* evidence that the persons named in it are members (§ 34).

Register of members.

Provisions of Act as to management of affairs, &c.

The Industrial and Provident Societies Act, 1893, contains little respecting the management of the affairs of a society registered under it or the rights of its members. Provision, however, is made for the settlement of disputes by arbitration (§ 49) (*e*); for the official inspection of the books (§ 18) and of the affairs of the company upon the application of a certain proportion of the members (§ 50); for the inspection by the members of the books of the company (§ 17); for the recovery of debts due rom members to the society (§ 23) (*ee*); for certain exemptions from income tax (§ 24); for the nomination by members not entitled to more than 100*l.* in the society, of persons to succeed to their shares on their death (§§ 25 and 26) (*f*); for the distribution of the property in the society of such members in the case of intestacy without letters of administration (§§ 27 and 28) (*g*); for dealing with the property in the society not exceeding 100*l.*, of lunatic members (§ 29); and for the protection of the society in acting under these provisions of the Act (§ 30); for the transfer of stock belonging to the society standing

(*d*) See, under the older Acts, *Dean* v. *Mellard*, 15 C. B. N. S. 19; *Linton* v. *Blakeney Industrial School*, 3 H. & C. 853, and *Gray* v. *Raper*, L. R. 1 C. P. 694, as to debts contracted before registration; and see the last case as to staying actions when the societ is being wound up.

Arbitration.

(*e*) See County Court Rules, Order XLIA. Upon the corresponding provisions in the older Acts, the leading cases are *Fleming* v. *Self*, Kay, 518, and 3 De G. M. & G. 997; *Farmer* v. *Giles*, 5 H. & N. 753; *Morrison* v. *Glover*, 4 Ex. 430; *Cutbill* v. *Kingdom*, 1 Ex. 494; *R.* v. *Trafford*, 4 E. & B. 122; *Kelsall* v. *Tyler*, 11 Ex. 543; *Smith* v. *Lloyd*, 26 Beav. 507, in which it was held that the provisions as to arbitration did not apply; and *Crisp* v. *Bunbury*, 8 Bing. 394; *Reeves* v. *White*, 17 Q. B. 995; *R.* v. *Mildenhall Savings Bank*, 6 A. & E. 952; *Timms* v. *Williams*, 3 Q. B. 413; *Thompson* v. *Planet Building Society*, 15 Eq. 333; *Wright* v. *Monarch Investment Building Society*, 5 Ch. D. 726; *Huckle* v. *Wilson*, 2 C. P. D. 410; where it was held that they did. See, also, *Armitage* v. *Walker*, 2 K. & J. 211; *Wright* v. *Desley*, 4 H. & C. 209; *Edwards* v. *Aberayron Soc.*, 1 Q. B. D. 563. As to Friendly Societies, *Willis* v. *Wells* [1892], 2 Q. B. 225; *Palliser* v. *Dale* [1897], 1 Q. B. 257; *Prentice* v. *London*, L. R. 10 C. P. 679; *Royal Liver Friendly Society*, 35 Ch. D. 332, and as to the jurisdiction of justices when the award is not valid, *Bache* v. *Billingham* [1894], 1 Q. B. 107. As to Building Societies, see *infra*, p. 1239, notes (*a*) and (*b*).

(*ee*) As to the lien under this section and set-off, see *ante*, p. 1033.

(*f*) Compare the Friendly Societies Act, 1875, § 15, and *Bennett* v. *Slater* [1899], 1 Q. B. 45; and as to the assignability of policies under that section, see *Griffin* v. *Griffin* [1902], 1 Ch. 135, in which the C. A. overruled *Caddick* v. *Highton* [1901], 2 Ch. 476, note, and *Warton* v. *Redman* [1901], 2 Ch. 471, on this point.

(*g*) The power under the section is discretionary. *Escritt* v. *Todmorden Co-op. Socy.* [1896], 1 Q. B 461.

in the name of a trustee who is abroad, bankrupt, lunatic, dead, or has been removed from office, and in certain other cases (§ 31); for the holding of land (§§ 36 and 37); for the investment of the society's funds (§§ 38 and 39); for the discharge of mortgages by endorsed receipt (§§ 43 and 45) or the conditions to be observed by banking societies (§ 19); for the security to be given (§ 47), and the accounts to be rendered by officers of the society (§ 48); and penalties are imposed for certain offences against the provisions of the Act (§§ 62—70). Subject, however, to these enactments, the rights of the members *inter se*, and the management of the society's affairs, are left to be provided for by the rules of the society. The rules bind the members as if they had entered into a covenant to observe them (§ 22). They may be altered from time to time (*h*), and must be registered by the registrar, and a copy of them must be delivered by the society to any person on demand, on payment of a sum not exceeding one shilling (§ 10).

Rules.

The Act in question does not contain any form of rules; but the schedule to the Act contains a list of the matters to be provided for by the rules of societies established under it.

Matters to be provided for.

In the absence of a special power in the rules, it is *ultra vires* for a registered society to apply its profits in support of a strike (*i*).

Strikes.

The debentures of an Industrial and Provident Society are not exempt from the Bills of Sale Acts (*k*).

Debentures.

A society registered under the Act is empowered to change its name (§ 52), to amalgamate with a similar society (§ 53); and to register itself as a company under the Companies Act, 1862 (§ 54), and a company registered under that Act may convert itself into a society registered in this Act (§ 55); but a special resolution is necessary for these purposes (ib. and § 51). An amalgamation or transfer does not prejudice the rights of creditors (§ 57).

Change of name, amalgamation, &c.

Societies registered under the Act in question may be wound up either by the Court or voluntarily, or may be dissolved by an instrument of dissolution signed by three-fourths of the members (§ 58).

Winding up.

The Court having jurisdiction over the winding up is the Court which would have jurisdiction if the society was a company registered under the Companies Act (*l*), and the provisions of those Acts apply to the winding up of these societies (§ 59) (*m*). Formerly the County Court had exclusive jurisdiction to wind up societies registered under the repealed Industrial and Provident Societies Act (*n*), though if not registered,

Court having jurisdiction.

(*h*) As to the effect of an alteration of rules, see *ante*, pp. 462 and 717, and *infra*, pp. 1237, 1238, and *Smith* v. *Galloway* [1898], 1 Q. B. 71.

(*i*) *Warburton* v. *Huddersfield Ind. Socy.* [1892], 1 Q. B. 817, affirming ib. 213.

(*k*) *G. N. Rail. Co.* v. *Coal Co-op. Socy.* [1896], 1 Ch. 187.

(*l*) See *ante*, p. 832.

(*m*) See, too, County Court Rules, Order XLIA. r. 12. As to transfer to the High Court of proceedings in a winding up pending when the Act came into operation, see § 59 and *Ferndale Industrial Co-op. Socy.* [1894], 1 Q. B. 828. Before this Act there was no such power of transfer. *Real Estates Co.* [1893], 1 Ch. 398.

(*n*) 39 & 40 Vict. c. 45, § 17. *London and Suburban Bank* [1892], 1 Ch. 604; *Ferndale Industrial Co-op. Socy.* [1894], 1 Q. B. 828.

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they might apparently have been wound up either in the Chancery division of the High Court or in the County Court (*o*).

Contributories and their liabilities.

With respect to contributories and their liabilities, there is no substantial difference between societies registered under this Act, and companies registered under the Companies Act, 1862 (see 56 & 57 Vict. c. 39, § 60) (*p*).

Dissolution.

A society under the Act is, however, dissolved by the order or the resolution to wind it up as the case may be, or by an instrument of dissolution signed by three-fourths of the members (§ 58). The instrument of dissolution must contain the particulars required by the Act; it may be varied by alterations signed by three-fourths of the members. Notice of dissolution must be advertised in the *Gazette*, and, unless steps are taken within three months in the County Court to set aside the dissolution, the society is to be treated as dissolved from the date of the advertisement (§ 61). But this must mean dissolved so far as is consistent with the proper winding up of its affairs (*q*).

Cancellation or suspension of registry.

The registrar may cancel or suspend the registry of a society if the number of members is less than seven, if the acknowledgment of registry was obtained by fraud or mistake, and if the society has ceased to exist; and, if he thinks fit, at the request of the society; and with the approval of the Treasury, if the society exists for an illegal purpose, or has wilfully and after notice violated any of the provisions of the Act (§ 9).

Trades Union.

Trade union societies, being in restraint of trade, were illegal before 34 & 35 Vict. c. 31 (*r*). Now, however, such societies may be registered under the Act last cited; but neither the Friendly Societies Acts (with the exception in some cases of § 28 of the Friendly Societies Act, 1875 (*s*)), nor the Industrial and Provident Societies Act, nor the Companies Acts, apply to them (*t*).

(*o*) See *Midland Counties Benefit Building Soc.*, 4 De G. J. & Sm. 468, reversing S. C., 10 Jur. N. S. 505; *Chatham Industrial Co-operative Soc.*, 10 Jur. N. S. 983; *Rotherhithe, &c., Soc.*, 32 Beav. 57; *Fountain's case*, 11 Jur. N. S. 553.

(*p*) See *Fountain's case*, 11 Jur. N. S. 533, L. C. as to liability in respect of debts contracted before registration.

(*q*) See *ante*, p. 1176. As to paying the whole assets to the last surviving member, see *Spiller* v. *Maude*, 10 Jur. N. S. 1089, and 32 Ch. D. 158, note; and as to the distribution of unexpended funds of a Trade Union among members at the time of dissolution, see *Printers' and Transferrers', &c., Protection Socy.* [1899], 2 Ch. 185, and the right of the Crown when all members of an unincorporated Friendly Society are dead, *Cunnack* v. *Edwards* [1896], 2 Ch. 679.

(*r*) See *Hornby* v. *Close*, L. R. 2 Q. B. 153; *Farrer* v. *Close*, L. R. 4 Q. B. 602; *Hilton* v. *Eckersley*, 6 E. & B. 47; but compare *R.* v. *Stainer*, L. R. 1 Cr. Ca. Res. 230, as to protection against embezzlement.

(*s*) The Friendly Societies Act, 1875, is now repealed by the Act of 1896, §§ 62—67 of which have replaced § 28 of the Act of 1875.

(*t*) 34 & 35 Vict. c. 31, § 5, amended by 39 & 40 Vict. c. 22, 2. See *R.* v. *Registrar of Friendly Societies*, L. R. 7 Q. B. 741, and generally as to the position of such societies, *Taff Vale Ry. Co.* v. *Amalgamated Society of Rail Servants* [1901], A. C. 426.

No. III.

BENEFIT BUILDING SOCIETIES.

Benefit Building Societies.

BENEFIT Building Societies are associations of a special kind, formed and regulated under particular Acts of Parliament for particular purposes; and are distinct as well from joint-stock companies and common law partnerships (*a*), as from friendly industrial and provident societies (*b*).

Acts now in force.

The Acts now in force are the principal Act of 1874, 37 & 38 Vict. c. 42, together with the amending Acts, 38 & 39 Vict. c. 9, 40 & 41 Vict. c. 63, 47 & 48 Vict. c. 41, and 57 & 58 Vict. c. 47 (*c*).

Objects of such societies.

The object of these societies is defined by the principal Act (37 & 38 Vict. c. 42) to be the raising by subscriptions of the members a stock or fund for making advances to members out of the funds of the society upon mortgage security (§ 13), and they may be either terminating or permanent (§§ 1, 3, 5). There is no limit to the number of members (§ 13) (*d*); and infants may be members, but cannot vote or hold office while under age (§ 38).

Formation of societies.

The society is formed by receiving a certificate (*e*) of incorporation from the registrar of friendly societies, and when registered it becomes a body corporate by its registered name, having perpetual succession and a common seal (§ 9), with power to hold land with right of foreclosure (§ 13) and to purchase or lease buildings for its business purposes (§ 37).

Cancellation, &c., of certificate.

The Court cannot declare the certificate of incorporation void on the ground that it was obtained by irregularity (*f*), but the registrar can cancel or suspend the registry of the society if the certificate was obtained

(*a*) See *per* Lord Selborne in *Brownlie* v. *Russell*, 8 App. Ca. p. 248; *Auld* v. *Glasgow Working Men's Building Soc.*, 12 App. Ca. p. 201.

(*b*) The Acts governing such societies seem applicable only to societies whose object is combination for carrying on industries, business, or trade. See *Midland Counties B. B. Soc.*, 4 De G. J. & S. 468, *per* Turner, L. J., and 56 & 57 Vict. c. 39.

(*c*) The earlier Act, 6 & 7 Will. 4, c. 32, was repealed by 37 & 38 Vict. c. 42 (§ 7), but this repeal was not to affect any subsisting society certified under the Act until such society should have obtained a certificate of incorporation under the new Act. (See, also, 38 & 39 Vict. c. 9.) And now the earlier Act has been repealed as from August, 1896, as to all societies certified under it after 1856. (See 57 & 58 Vict. c. 47, § 5.) The result of this may be that any society certified under the earlier Act, after 1862, and not incorporated under the Act of 1874, is unlawful under § 4 of the Comp. Act, 1862, and therefore cannot be wound up by the Court, see *Ilfracombe Permanent Building Society* [1901], 1 Ch. 105.

(*d*) But it seems that there must be at least three; see § 17, which requires before registration a copy of the rules to be signed by three intending members and the secretary.

(*e*) As to the form of the certificate, see schedule to 40 & 41 Vict. c. 63.

f *Glover* v. *Giles*, 18 Ch. D. 173.

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by fraud or mistake, and in certain other cases (57 & 58 Vict. c. 47, § 6). The liability of the members is limited (37 & 38 Vict. c. 42, § 14) (*g*).

Existing societies.

Societies existing at the date of the principal Act and certified and enrolled under the Act of Will. 4, are upon the enrolled transcript or a certified copy of the rules of such society being delivered to and registered by the registrar entitled to a certificate of registration; provided the application to the registrar is made by authority of a general meeting of the society (§§ 10, 11, 12).

Certificate of incorporation, how obtained.

Persons intending to establish a society after the date of the Act (Nov. 2, 1874) are entitled to a certificate of registration on transmitting to the registrar two copies of the rules agreed on signed by three such persons; provided such rules contain all the provisions set out in § 16 of the Act as amended by 57 & 58 Vict. c. 47, § 1, and conform to the Act, and the proposed name is not identical or similar to that of a subsisting society (§ 17).

Effect of incorporation.

On the incorporation of the society all rights of action and other rights and interests in real and personal estate belonging to or held in trust for the society vest in it (*h*).

Amalgamation of societies.

Any society registered under the principal Act is empowered to amalgamate with a similar society upon such terms as may be agreed upon (§ 33) by the requisite number of members (ib. and 57 & 58 Vict. c. 47, § 19): but creditors are not to be prejudiced. Notice of such amalgamation is to be sent to the registrar and registered by him, and such registration is to operate as an effectual conveyance of the funds and property of the uniting society to the united society (*i*).

Rules.

The matters required by § 16 of the principal Act and by § 1 of the Act of 1894 to be set forth in the rules of such societies, and the provisions of the Acts relating to such matters are—

Name of society.

1. The name of the society and chief office or place of meeting for the business of the society.

§ 22 of the principal Act enables a society to change its name: and 40 & 41 Vict. c. 63, § 2, enables a change to be made in the chief offices. Notice of the change is in each case to be given to the registrar, who is to register the change, and give a certificate of registration: see the form given in the schedule to Act of 1894. A society is forbidden to use any name other than its registered name under pain of a penalty (57 & 58 Vict. c. 47, § 15).

Funds.

2. The manner in which the stock or funds of the society is or are to be raised.

Unadvanced shares.

3. The terms upon which unadvanced subscription shares are to be issued; the manner in which the contributions are to be paid to the society and withdrawn by the members, with tables, where applicable in the opinion of the registrar, showing the amount due by the society for principal and interest separately.

Paid-up shares.

4. The terms upon which paid-up shares, if any, are to be issued and withdrawn, with tables where applicable in the opinion of the registrar, showing the amount due by the society.

Preference shares.

5. Whether preferential shares are to be issued and if so within what limits (*k*).

(*g*) *Brownlie* v. *Russell*, 8 App. Ca. 235; *Doncaster Permanent B. Soc.*, 3 Eq. 158.

(*h*) 37 & 38 Vict. c. 42, §§ 27 & 28, and 40 & 41 Vict. c. 63, §§ 3 & 4.

(*i*) 40 & 41 Vict. c. 63, § 5.

(*k*) See as to preference shares, *Murray* v. *Scott*, 9 App. Ca. 519. *Sixth West*

6. The manner in which advances are to be made and repaid; the deductions, if any, for premiums and the conditions upon which a borrower can redeem the amount due from him before the expiration of the period for which the advance was made, with tables, where applicable in the opinion of the registrar, showing the amount due from the borrower after each stipulated payment.

Advances and mortgages.

§ 13 of the principal Act empowers societies to make advances to members on the security of freehold, copyhold (*l*), or leasehold estates (*m*).

Security authorised.

§ 12 of the Act, 1894, prohibits balloting for advances in societies formed after the passing of that Act, and enables societies formed before that time, with rules providing that advances may be ballotted for, to resolve on a scheme for discontinuing advances by ballot, and making other provision in lieu thereof.

Balloting for advances.

§ 13 of the same Act prohibits societies under the Building Societies Acts from making advances on second mortgage, unless the prior mortgage is in favour of the society (*n*). If an advance is made in contravention of the section, the directors who authorised the advance are jointly and severally liable for the loss (§ 13).

Unauthorised securities.

Mortgages by members to the society for securing the repayment to the society of a sum not exceeding 500*l.* are exempt from stamp duty (*o*); other mortgages are liable to stamp duty (*p*). § 42 of the principal Act enacts that any receipt endorsed on any mortgage shall be a sufficient discharge without reconveyance (*q*); but the Act allows a reconveyance to be made (*r*). The receipt or reconveyance is exempt from stamp duty (*s*).

Stamps.

Reconveyance.

§ 10 of the Act of 1894 enacts that when a society is being dissolved or wound up, a member to whom an advance has been made on mortgage shall not be liable to pay the amount payable under the mortgage except at the time or subject to the conditions therein expressed (*t*).

Redemption on dissolution, &c.

An infant member cannot execute a valid mortgage to the society for

Mortgage by infant.

Kent Mutual Building Socy. v. *Shove* [1899], 2 Ch. 64, note.

(*l*) As to admittances to copyholds, see § 28.

(*m*) A society may not make an advance on the security of a member's share in the society, *Cullerne* v. *London, &c., Building Socy.*, 25 Q. B. D. 485; *Davis* v. *Norton* [1900], 2 Ch. 819. See, too, *Sheffield, &c., Building Socy.* v. *Aizlewood*, 44 Ch. D. 412.

(*n*) See before this Act, *Sheffield, &c., Building Society* v. *Aizlewood*, 44 Ch. D. 412. The society may not postpone their security to that of another, *Portsea Island Building Socy.* v. *Barclay* [1895], 2 Ch. 298, and *ante*, p. 297.

(*o*) Stamp Act, 1891, § 89.

(*p*) 37 & 38 Vict c. 42, § 41. See under the earlier Acts, *Williams* v. *Hayward*, 22 Beav. 220; *Thorn* v. *Croft*, 3 Eq. 193, which decided that mortgages did not require a stamp.

(*q*) As to the effect of a statutory receipt, see *Hosking* v. *Smith*, 13 App. Ca. 582 (overruling *Robinson* v. *Trevor*, 12 Q. B. D. 423, and *Pease* v. *Jackson*, 3 Ch. 576). *Fourth City Mutual Benefit Building Society* v. *Williams*, 14 Ch. D. 140; *Sangster* v. *Cochrane*, 28 Ch. D. 298; *Carlisle Banking Co.* v. *Thompson*, ib. 399. For the form of the receipt, see the schedule to the Act of 1874.

(*r*) As to the effect of a reconveyance as distinguished from a receipt, see *Carlisle Banking Co.* v. *Thompson*, 28 Ch. D. 399.

(*s*) *Old Battersea, &c., Building Socy.* v. *Inland Revenue* [1898], 2 Q. B. 294.

(*t*) This was so before this section in the case of a dissolution under an instrument of dissolution, see *Kemp* v. *Wright* [1895], 1 Ch. 121; but it was otherwise in a winding up, see *London*

advances to him; such a mortgage is void as against him under the Infants Relief Act, 1874; but if the society advances money to an infant member, in ignorance of his infancy, to enable him to purchase land, and the money is applied in the purchase of land and its repayment is secured by a mortgage of the land to the society, the society will be entitled to stand in the position of the vendor, and consequently to a lien on the land and title deeds for the amount of the purchase money and interest (*u*). It is doubtful whether a society can transfer a mortgage to it by an advanced member to secure the repayment of the advance; even if the transfer is valid, the power of sale cannot, as a rule, be exercised by any one other than the trustees of the society (*x*).

Transfer of mortgage.

Terms of redemption

The terms on which mortgages may be redeemed depend upon the terms of the mortgage and the rules of the society, and are closely connected with the right of withdrawal; this subject is discussed below (pp. 1238 and 1243) (*y*). As to the alteration of the rules, see *infra*, p. 1237.

Losses.

7. The manner in which losses are to be ascertained and provided for.

Ceasing of membership.

8. The manner in which membership is to cease.

9. Whether the society intends to borrow money, and if so, within what limits not exceeding those prescribed by the Building Societies Acts.

Borrowing powers.

The power to borrow is given by § 15 of the principal Act, and is limited with reference to the amount for the time being secured to the society by mortgages from its members; and in calculating this amount, the amount secured on properties payments in respect of which are upwards of twelve months in arrear, and the amount secured on properties of which the society has been twelve months in possession, must be omitted (Act, 1894, § 14) (*z*).

Section 15 of the principal Act also requires § 14 (by which the liability of members is limited) and § 15 of the Act to be printed or written on all securities given for any deposit or loan by a society (*a*). Societies under the Act must not accept any deposit except on the terms that not less than one month's notice may be required before repayment or withdrawal (Act, 1894, § 15).

Deposits.

Borrowing in excess of powers.

An unincorporated building society, apart from its rules, and an incorporated society, apart from the Acts and rules, has no power to borrow (*b*) If a society borrows without power, or exceeds its borrowing powers, the

Provident Socy. v. *Morgan* [1893], 2 Q. B. 266, and *Tosh* v. *North British Building Society*, 11 App. Ca. 489.

(*u*) *Thurston* v. *Nottingham, &c., Building Socy.* [1902], 1 Ch. 1, varying the order of Joyce, J., in [1901], 1 Ch. 88.

(*x*) *Re Rumney and Smith* [1897], 2 Ch. 351; *Ulster Permanent Building Socy.* v. *Glenton*, 21 L. R. Ir. 124.

(*y*) See as to the terms of redemption in a terminating society, *Seagrave* v. *Pope*, 1 D. G. M. & G. 783; *Mosley* v. *Baker*, 3 De G. M. & G. 1032, note, affirming 6 Hare, 87; *Fleming* v. *Self*, 3 De G. M. & G. 997; *Archer* v. *Harrison*, 7 ib. 404; *Smith* v. *Pilkington*, 1 De G. F.&J. 120; *Sparrow* v. *Farmer*, 26 Beav. 511; *Handley* v. *Farmer*, 29 ib. 362; *Farmer* v. *Smith*, 4 H. & N. 196. As to whether the society is entitled to future interest, compare *Ex parte Osborne*, 10 Ch. 41, with *Matterson* v. *Elderfield*, 4 Ch. 207; and as to premiums, *Harvey* v. *Municipal Permanent, &c., Socy.*, 26 Ch. D. 273.

(*z*) See further as to calculating the amount, *Neath Building Socy.* v. *Luce*, 43 Ch. D. 158, and *Ex parte Pullman*, 45 Ch. D. 463.

(*a*) This is merely directory, and the security will be valid, *Hawkins' case*, 23 Ch. D. 452.

(*b*) See *ante*, p. 287.

society is not bound (*c*); but by § 43 of the principal Act the directors or committee of the management at the time when the money is borrowed are personally liable for the amount received in excess of the authorised limit (*d*).

Application and investment of funds.

10. The purposes to which the funds of the society are to be applied and the manner in which they are to be invested (*e*).

§§ 25 and 26 of the principal Act deal with the manner of investing the surplus funds of a society and the transference of such investments; § 17 of the Act of 1894 authorises such funds to be invested in any security upon which trustees are authorised by law to invest (*f*). As to deposits in savings banks and investments in Government stock, see § 16 of that Act.

Alteration of rules.

11. The manner of altering and rescinding the rules of the society and of making additional rules.

Registration of rules.

§ 18 of the principal Act provides for the way in which the rules may be altered (*g*). All rules must be registered by the registrar, and a copy of them must be supplied by the society to any person on demand on payment of a sum not exceeding 1*s*. (§ 17). By § 21 the rules are made to bind all members and officers of the society, and all persons claiming on account of a member or under the rules. A certified copy is *primâ facie* evidence, § 20.

Alteration of rules.

The certificate of the registrar is conclusive that the rules have been duly passed (*h*), but not that they are valid (*i*). The general principles which regulate the exercise by a majority of a power to alter the rules of a company or society, and the extent to which the rights of members can be affected by an alteration of the rules, have been considered elsewhere (*k*). The power conferred by this Act can, in a proper case, be exercised even after the company is known to be insolvent (*l*). It is competent for the society by an alteration of its rules to reduce the amounts due from

Alteration of amount due to members.

(*c*) *Ex parte Watson*, 21 Q. B. D. 301; *Blackburn Benefit Building Soc.* v. *Cunliffe Brooks*, 22 Ch. D. 61; 9 App. Ca. 589; 29 Ch. D. 902; *Chapleo* v. *Brunswick Soc.*, 6 Q. B. D. 696, and *ante*, pp. 286 *et seq.* See, as to the right to recover from the society any money spent in paying the society's debts, *ante*, pp. 292 *et seq.*

(*d*) See, as to this section, *Looker* v. *Wrigley*, 9 Q. B. D. 397. *Cross* v. *Fisher* [1892], 1 Q. B. 467. As to the liability of the directors apart from the Act, see *Richardson* v. *Williamson*, L. R. 6 Q. B. 276, and *Chapleo* v. *Brunswick Soc.*, 6 Q. B. D. 696; and *ante*, pp. 350 *et seq.*

(*e*) See, as to the power to invest in land under the earlier Acts, *Mallock* v. *Jenkins*, 14 Beav. 633; *Guiness* v. *Harrison*, 26 Beav. 435; *Re Kent B. B. Soc.*, 1 Dr. & Sm. 417.

(*f*) *Secus* before that Act, *National Permanent, &c., Building Society*, 43 Ch. D. 431.

(*g*) As to the form of the certificate of alteration, see 57 & 58 Vict. c. 47, Sched. III. As to the application of this section to societies formed under the old Acts and subsequently incorporated under the Act of 1874, see *Strohmenger* v. *Borough of Finsbury, &c., Society* [1897], 2 Ch. 469.

(*h*) *Dewhurst* v. *Clarkson*, 3 El. & Bl. 194; *Rosenberg* v. *Northumberland Building Soc.*, 22 Q. B. D. 373.

(*i*) *Laing* v. *Reed*, 5 Ch. 4; *Cullerne* v. *London and Suburban, &c., Building Soc.*, 25 Q. B. D. p. 480.

(*k*) See *ante*, pp. 461 *et seq.* And in the case of a Friendly Society, see *Smith* v. *Galloway* [1898], 1 Q. B. 71.

(*l*) *Sixth West Kent, &c., Building Soc.* v. *Hills* [1899], 2 Ch. 60, where a rule was passed conferring special powers of realisation and compromise.

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the society to its members, if, owing to a loss, such a cause is rendered expedient in the interests of the society (*m*).

Alteration of terms of redemption.

The extent to which an advanced member's right to redeem his mortgage can be varied by an alteration of the rules made subsequently to his mortgage has given rise to some discussion. It appears, however, to be settled that if the right to redeem is upon payment of what is due according to the rules for the time being (*n*), or simply according to the rules (*o*) of the society, the right of redemption may be varied by a subsequent alteration of the rules, unless upon the true construction of the mortgage this is inconsistent with the bargain entered into (*p*).

Alteration of terms of withdrawal.

So, too, the terms upon which members are entitled to withdraw may be altered by an alteration of the rules (*q*), and such an alteration will be binding on a member who has given notice of withdrawal, and whose notice has expired before the rules were altered (*r*); but an alteration of this character cannot be made after the society is known to be insolvent (*s*); nor can the terms of withdrawal be altered except by an alteration of the rules, *e.g.*, neither by a resolution of the members (*t*) nor by the deed of dissolution (*u*).

Appointment, &c., of directors.

12. The manner of appointing, remunerating and removing the board of directors or committee of management, auditors, and other officers.

See generally as to this, *ante*, pp. 413 *et seq.*

Calling of meetings.

13. The manner of calling general and special meetings of the members.

See generally as to this, *ante*, pp. 421 *et seq.*

Audit of accounts.

14. Provision for an annual or more frequent audit of the accounts and inspection by the auditors of the mortgages and other securities belonging to the society.

§ 40 of the principal Act provides for an annual audit and statement of the funds, and a copy of such accounts and statement is to be sent to each member (*x*), and also to the registrar. The annual account and statement must contain the particulars prescribed by the Act of 1894 and be certified by the auditors (§ 2); at least one of the auditors of the society must be a public accountant (§ 3). The provisions of § 40 of the principal Act now apply to unincorporated societies formed under the Act of 1836 (§ 25).

Abstracts of the annual accounts are to be laid before Parliament (§ 27).

Inspection of books.

The Act of 1894 also empowers the registrar, on the application of the prescribed number of members, to appoint an accountant or actuary to inspect

(*m*) *Strohmenger* v. *Finsbury Permanent, &c., Building Soc.* [1897], 2 Ch. 469. *Barnard* v. *Tomson* [1894], 1 Ch. 374.

(*n*) *Rosenberg* v. *Northumberland Building Soc.*, 22 Q. B. D. 373; *Wilson* v. *Miles Platting Building Soc.*, ib. 381, note.

(*o*) *Bradbury* v. *Wild* [1893], 1 Ch. 377.

(*p*) *Smith's case*, 1 Ch. D. 481, and see the remarks on that case in *Wilson* v. *Miles Platting Building Soc.*, 22 Q. B. D. 381, note.

(*q*) *Barnard* v. *Tomson* [1894], 1 Ch. 374.

(*r*) *Pépé* v. *City and Suburban, &c., Building Soc.* [1893], 2 Ch. 311; *Sed qu.*: if by the rules he thereupon ceases to be a member, *Christie* v. *Northern Counties, &c., Building Soc.*, 42 Ch. D. 62.

(*s*) *Sixth West Kent Mutual Building Society* v. *Hills* [1899], 2 Ch. 68, and *Sixth West Kent, &c., Society* v. *Shove* [1899], 2 Ch. 64, note.

(*t*) *Auld* v. *Glasgow Working Men's Building Society*, 12 App. Ca. 197.

(*u*) *Botten* v. *City and Suburban, &c., Building Soc.* [1895], 2 Ch. 441.

(*x*) As to how far audited accounts bind the members, see *Holgate* v. *Shutt*, 28 Ch. D. 111.

the society's books (§ 4), and to appoint an inspector to examine into the affairs of the society, or to call a special meeting of the society and to direct what matters are to be discussed and determined thereat (§ 5), and he may, in certain cases, exercise the powers conferred by § 5 without any application of the members, but with the consent of the Secretary of State (§ 5 (5)).

Provisions as to settlement of disputes.

15. Whether disputes between the society and any of its members or any persons claiming through any member or under the rules, shall be settled by reference to the Court (*y*), or to the registrar, or by arbitration (*z*).

What sort of disputes must be referred and what may be the subject of an action, has given rise to much controversy. By 47 & 48 Vict. c. 41, § 2, disputes which must be referred are confined to those which arise between the society and a member in his capacity of member (*a*), and do not include disputes arising out of any mortgage he may have given unless the rules so provide (*b*). As to unincorporated societies, see 10 Geo. 4, c. 56, §§ 27-29, and 4 & 5 Will. IV. c. 40, §§ 7 & 8 (*c*).

The rules having settled to which tribunal disputes are to be referred, §§ 34-36 of the principal Act provide for the regulation of such tribunal, and enable its determination to be enforced. Such determination is to be final: but any one of the tribunals may state a case for the opinion of the Supreme Court on any question of law, though it cannot be compelled to do so (Act, 1894, § 20) (*d*).

Seal of company.

16. Provision for the device, custody, and use of the seal of the society, which shall in all cases bear the registered name thereof.

Custody of deeds.

17. Provision for the custody of the mortgage deeds and other securities belonging to the society.

Liabilities and duties of directors.

18. The powers and duties of the board of directors or committee of management, and other officers.

§ 23 of the principal Act requires all officers of a society who have charge of money to give security (*e*), and by § 24, such officers are bound to account for and pay over all monies in their hands. §§ 29 & 30 contain provisions enabling the directors to deal with the share of a member dying intestate. But any person withholding or misapplying money or

(*y*) This means the County Court, see 37 & 38 Vict. c. 42, § 4.

(*z*) As to the appointment of arbitrators, see *Norton* v. *Counties Conservative Building Socy.* [1895], 1 Q. B. 247, disapproving *Christie* v. *Northern Counties, &c., Building Socy.*, 43 Ch. D. 62.

(*a*) See, as to this, *Municipal Building Soc.* v. *Richards*, 39 Ch. D. 372; *Walker* v. *General Mutual Building Soc.*, 36 ib. 777; *Thompson* v. *Planet Building Soc.*, 15 Eq. 332. See, also, the cases on other Acts collected, *ante*, p. 1230, note (*e*).

(*b*) See, as to this, *Western Suburban Building Soc.* v. *Martin*, 17 Q. B. D. 609. The enactment in the text has altered the law laid down in some previous cases relating to mortgages, viz., *Municipal Permanent, &c., Soc.* v. *Kent*, 9 App. Ca. 260; *Hack* v. *London Build. Soc.*, 23 Ch. D. 103; *Wright* v. *Monarch, &c., Soc.*, 5 Ch. D. 726, and restores the law as it stood under older enactments, *Mulkern* v. *Lord*, 4 App. Ca. 182; *Fleming* v. *Self*, 3 De G. M. & G. 997.

(*c*) For cases under these statutes, see Wurtzburg on Building Societies (3rd ed.), 221 *et seq.*

(*d*) See, as to arbitrators before the Act of 1894, *Knight* v. *Tabernacle Permanent Building Soc.* [1892], A. C. 298. For the position of the Court when a case is stated, see *Knight and Tabernacle Permanent Building Soc.* [1892], 2 Q. B. 613.

(*e*) For the form of the security to be given, see the schedule to the Act of 1874.

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making false returns is liable to a penalty (§§ 31, 43 of the principal Act and § 22 of the Act of 1894) (*f*).

Gifts, &c., to directors.

The Act of 1894 forbids any director, solicitor, or other officer of a society to accept any gift or commission in connection with any loan made by the society, and any person paying or accepting such gift is liable to fine or imprisonment, and must pay over the value of the gift to the society (§ 23).

Liability of directors.

As to the liability of directors and the committee of management if the society receives loans or deposits in excess of the prescribed limits, see § 43 of the principal Act; and if the society uses a name other than its registered name, or receives deposits except on the terms that at least one month's notice of withdrawal may be required, see § 15 of the Act of 1894.

Fines and forfeitures.

19. As to the fines and forfeitures to be imposed on members of the society (*g*).

Dissolution.

20. The manner in which the society, whether terminating or permanent, shall be terminated or dissolved.

§ 32 provides that any society under the Act may be terminated or be dissolved—

(1.) Upon the happening of any event declared by its rules to be the determination of the society.

(2.) By dissolution in manner prescribed by its rules.

(3.) By dissolution with the consent of three-fourths of the members holding not less than two-thirds of the number of shares in the society, testified by their signatures, to an instrument of dissolution (*h*).

Winding up.

(4.) By winding up either voluntarily under the supervision of the Court, or by the Court: if the Court shall so order on the petition of any member authorised by three-fourths of the members present at a general meeting of the society or on the petition of any judgment creditor for not less than 50*l*., but not otherwise; and notice of the commencement and termination of every dissolution and winding up must be sent to the registrar, and registered by him.

Court having jurisdiction.

By the Act of 1894, every society under the Building Societies Act is to be deemed a company within the meaning of the Companies (Winding-up) Act, 1890 (§ 8) (*i*). The Court which has jurisdiction to wind up an incorporated society is therefore the Court which would have jurisdiction to wind it up if it were a company, and it is apprehended this is the case also with regard to unincorporated societies (*k*). But an unincorporated

(*f*) As to the general rights and liabilities of directors and others, see *ante*, pp. 413 *et seq.* and 509 *et seq.*; and *Small* v. *Smith*, 10 App. Ca. 119, where it was held the directors had no power to give a guarantee. *Sheffield, &c., Building Soc.* v. *Aizlewood*, 44 Ch. D. 412 (but see now § 13 of the Act of 1894), and *Cullerne* v. *London and Suburban Building Soc.*, 25 Q. B. D. 485.

(*g*) As to the construction of rules imposing fines, see *Re Tierney*, 9 Ir. R. Eq. 1. As to forfeiture of shares, see *Card* v. *Carr*, 1 C. B. N. S. 197; *Moore* v. *Rawlins*, 6 C. B. N. S. 289; and *ante*, pp. 722 *et seq.*

(*h*) As to the signature of the instrument of dissolution, by minors, joint shareholders, and by an agent, see *Dennison* v. *Jeffs* [1896], 1 Ch. 611.

(*i*) *Semble*, under this section and § 32 of the principal Act an incorporated building society may be wound up voluntarily. For an instance of a winding up under supervision, see *Sunderland 32nd Universal Building Soc.*, 21 Q. B. D. 349.

(*k*) See *ante*, pp. 828 and 832. As to the transfer to the High Court of winding-up proceedings pending in a

society cannot be wound up under the Companies Acts if it has less than seven members (*l*).

Liquidators.

When a society is being dissolved in the 2nd or 3rd of these ways, the Building Societies Acts continue to apply to it as though the liquidators or persons conducting the dissolution were the directors or committee of management (Act, 1894, § 9).

Cancellation of and suspension of registry by registrar.

The Act of 1894 empowers the registrar to cancel or suspend the registry of the society if the certificate of incorporation has been obtained by fraud or mistake, if the society exists for an illegal purpose, or has wilfully, and after notice from the registrar, violated any provisions of the Building Societies Acts, or if it has ceased to exist; he may also cancel the registry, if he thinks fit, at the request of the society (see § 6).

Dissolution by registrar after investigation.

The Act also empowers the registrar, upon the application of the prescribed number of members, when a society under the Acts is unable to meet the claims of its members, to investigate its affairs, and after investigation award that it be dissolved, and direct the manner in which its affairs are to be wound up (§ 7).

Instrument of dissolution.

The instrument of dissolution cannot vary the rights or priorities of members (*m*), or the time at which advanced members are liable to pay up the instalments due from them (*n*). In ascertaining the statutory majority, members who have given notice of withdrawal but have not received their money must be taken into account (*o*).

Questions arising in the winding up of building societies.

In the winding up of benefit building societies, the peculiar nature and constitution of the societies give rise to some questions of a different character from those which arise in the winding up of ordinary companies. The members of these societies are divided into two classes: *unadvanced members* who, by continuing in the society for a certain period of time and paying regularly what becomes due from them according to the rules of the society, are at the end of that period of time entitled to receive all they have paid with a share of any profits the society may have made; and *advanced members*, who receive at the beginning the sum which the unadvanced members receive at the end, and execute a mortgage to the society to secure the repayment of this sum with interest by fixed instalments, with a right of redemption, when the amount of the instalments they have paid, together with any profits with which they may have been credited, is equal to the principal sum advanced with the interest agreed upon. Further, the rules of these societies usually allow members to withdraw either the whole or part of the sums standing to their credit in the books of the society on giving a notice of their desire so to do.

Limit of liability.

If the society is incorporated, the liability of both classes of members is limited by § 14 of the principal Act—in the case of an unadvanced member to the amount actually paid or in arrear on his shares, that is to

County Court when the Act of 1894 passed, see § 8 (2) and *Ferndale Industrial Co-op. Soc.* [1894], 1 Q. B. 828. There was no such power before the Act, see *Real Estates Co.* [1893], 1 Ch. 398.

(*l*) *Bowling and Welby's Contract* [1895], 1 Ch. 663. See, too, *ante*, p. 1233, note (*c*).

(*m*) *Bolten* v. *City and Suburban Building Soc.* [1895], 2 Ch. 441, and *Kemp* v. *Wright* [1895], 1 Ch. 121, reversing [1894], 2 Ch. 462.

(*n*) *Kemp* v. *Wright* [1895], 1 Ch. 121. See now the Act, 1894, § 10.

(*o*) *Sibun* v. *Pearce*, 44 Ch. D. 354.

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say, to the amount actually in arrear at the time when the liability is to be enforced (*p*), and in the case of advanced members to the amount payable on his shares under any mortgage or other security, or under the rules of the society. A member who has actually withdrawn and ceased to be a member before the winding up, is under no liability (*q*). If the society is unincorporated, the liability of its members for the outside debts of the society properly incurred is unlimited, and depends on the doctrine of principal and agent, and not on the doctrine of partnership nor on the contract of the members *inter se*, and the members both advanced and unadvanced are liable as contributories for ordinary debts incurred while they are members, and for the costs of winding up (*r*).

Distribution of surplus assets.

The assets of a building society are, as a rule, amply sufficient for the payment of outside creditors, and the questions which usually arise in the winding up of such societies relate to the manner in which the surplus assets are to be distributed when they are insufficient to pay to the unadvanced members the whole sum to which they are entitled. In these cases difficulties have arisen as to the terms on which advanced members are entitled to redeem their mortgages, and as to the manner in which the assets are to be divided between those members who have given a notice of withdrawal, which has expired before the stoppage of the society's business or the recognition that the business must be stopped, and members who have given no such notice.

Position of advanced and unadvanced members.

The rights of the members are to be determined in each case by the contract into which they have entered, and not by presumptions or inferences from the law relating to companies of a different kind or to common law partnerships (*s*). In these societies there is no presumption that all the members are liable to contribute equally to the losses of the society. Consequently, in the absence of anything in the rules as to the way in which such losses are to be borne, advanced members are entitled, on the company going into liquidation, to redeem their mortgages on payment of what remains due from them after credit has been given for all instalments already paid and for any profits which may have been allocated to them, and the society has no right to make any deductions either from these instalments or from these profits in order to throw the losses of the society equally upon the advanced and unadvanced members (*t*).

(*p*) See *per* Lord Selborne in *Brownlie* v. *Russell*, 8 App. Cas. p. 250; and *per* Stirling, J., in *Middlesbrough, Redcar, and Saltburn Building Soc.*, 58 L. J. Ch. 771; but see *per* Cave, J., in *Sheffield* v. *South Yorks Building Soc.*, 22 Q. B. D. pp. 477 and 478, and *per* Lindley, L.J., in *Sibun* v. *Pearce*, 44 Ch. D. p. 372, who express the view that the liability extends to what would be payable until the maturity of the shares.

(*q*) *Sheffield and South Yorks Building Soc.*, 22 Q. B. D. 470.

(*r*) *West London and General, &c., Building Soc.* [1894], 2 Ch. 353. See, too, *per* Lord Blackburn, in *Murray* v. *Smith*, 9 App. Cas. 546—548. In this case the principal creditors were depositors, but the Court held that the society had no power to pledge the personal credit of its members to repay these deposits; the liability in this respect was regulated by the rules of the society. *Semble*, such societies may register with a view to a winding up, and thus obtain limited liability, see [1894], 2 Ch. 371, and *Fountain's case*, 32 L. J. Ch. 593.

(*s*) See the cases in the next note.

(*t*) *Brownlie* v. *Russell*, 8 App. Ca. 235; *Tosh* v. *North British Building*

Withdrawing members.

Members who have given notice which has expired before the stoppage of the society's business, or the recognition that its business must be stopped (*u*), of their desire to withdraw the monies standing to their credit, either out of the general funds of the society or out of a special fund, as the case may be, are entitled to receive payment of these monies before the other members who have claims against the same funds, but who have given no such notice, receive anything, provided that on the true construction of the rules the effect of the notice is to confer on the members who have given it, an unconditional right to receive these monies, though the society may not be bound to pay out immediately (*x*); but if the notice merely confers upon the members who give it a right to be paid if there be a particular fund in existence and there is no such fund, the members who have given notice have no priority over the other members (*y*).

Alteration of rights of redemption and withdrawal.

The extent to which the right of redemption and the right of withdrawal may be varied has been already discussed (*z*). The Act of 1894 provides that when a society under the Act is being wound up or dissolved, an advanced member is not liable to pay the amount payable by him, except at the time and subject to the conditions provided by his mortgage (*a*).

Past members.

Past members, whether advanced or unadvanced, who have satisfied all their obligations to the society in accordance with its rules, are under no liability to contribute to the losses of the society where there are no outside creditors (*b*).

Preference shares in building societies.

There is nothing in the Acts relating to building societies or in the nature of the societies themselves (*c*) to prevent the issue of preference shares, and if such shares are issued the preferences created by them must

Soc., 11 App. Ca. 489; *Auld* v. *Glasgow Working Men's Building Soc.*, 12 App. Ca. 197; and see *Doncaster Permanent Building Soc.*, 3 Eq. 158; *Britannia Permanent, &c., Building Soc.*, W. N. 1891, p. 123. For instances in which the rules imposed a liability for loss on advanced members, see *West Riding of Yorkshire Building Soc.*, 43 Ch. D. 407; *Albion Mutual, &c., Building Soc.*, ib. 410, note; *Reliance Permanent, &c., Building Soc.*, W. N. 1892, p. 77; and by a subsequent alteration of the rules, *Bradbury* v. *Wild* [1893], 1 Ch. 377.

(*u*) *Ambition Investment Building Soc.* [1896], 1 Ch. 89; *Barnard* v. *Tomson* [1894], 1 Ch. 374; and *Sunderland 36th, &c., Building Soc.*, 24 Q. B. D. 394.

(*x*) *Walton* v. *Edge*, 10 App. Ca. 33, and 24 Ch. D. 421, *sub nom. Blackburn Benefit Building Soc.; Mutual Aid Building Soc.*, 29 Ch. D. 182, affirmed 30 Ch. D. 434; *Alliance Society*, 28 Ch. D. 559; *Davis* v. *Norton* [1900], 2 Ch. 819, and cases in the last preceding note. See, as to the priority of an executor of a member who died before the winding up, and as to a right of set-off in the case of a withdrawing member, *Davis* v. *Norton* [1900], 2 Ch. 819. A rule for withdrawal in rotation where the available balance is insufficient to pay depositors wishing to withdraw in full, suspends the right to sue for the deposit, *Brett* v. *Monarch Investment Building Soc.* [1894], 1 Q. B. 367.

(*y*) *Mutual Society*, 24 Ch. D. 425, note, explained in the cases cited in the last note.

(*z*) *Ante*, p. 1238.

(*a*) *Ante*, p. 1235. *Semble*, the old rule is still applicable in the case of unincorporated societies.

(*b*) *Ex parte Pullman*, 45 Ch. D. 463.

(*c*) The Acts of 1874, § 16 (2), and of 1894, § 1 (*d*), recognise that there may be preference shareholders.

be observed. Thus, in a case where the society had power to issue fully paid up or deposit shares, which entitled the holders, called depositors, to withdraw their deposits on giving the prescribed notice, in preference to other shares, it was held that the depositors, whether they had or had not given notice of withdrawal before the commencement of the winding up, were entitled to be paid the amount of their deposits before the members who held other shares received any portion of the surplus assets (*d*). If the preference shareholders are exempt from losses, the advanced and unadvanced members may be liable to repay them the full amount of their shares with interest (*e*).

Division of surplus.

If, after the payment of all the shareholders who are entitled to priority, there remains a surplus to be divided amongst the ordinary unadvanced shareholders, and if these shareholders have joined the society at different times, the surplus is divided amongst them in proportion to the time they have been members of the society (*f*).

(*d*) *Guardian Building Soc.*, 23 Ch. D. 440 & 453, affirmed 9 App. Ca. 519, *sub nom. Murray* v. *Scott.* The question here decided was not whether the depositors who had given notice of withdrawal before the commencement of the winding up were entitled to priority over depositors who had given no notice, but whether the depositors as a class were entitled to priority over the holders of other shares. For the decision of this question it was immaterial whether notice had or had not been given, for the winding up is equivalent to the compulsory withdrawal of all members. See 8 App. Ca. p. 254. See, also, *Sixth West Kent Mutual Building Soc.* v. *Shove* [1899], 2 Ch. 64, note.

(*e*) *Reliance Permanent Benefit Building Soc.*, W. N. 1892, p. 77.

(*f*) *Doncaster Permanent Building Soc.*, 4 Eq. 579. In this case there was a rule to this effect, but it is evident from the nature of the society that the method of distribution is the fair one. See, too, *Printers and Transferrers Amalgamated, &c., Society* [1899], 2 Ch. 184.

No. IV.

CHRONOLOGICAL LIST OF STATUTES RELATING TO COMPANIES,

THE following is a chronological list of (it is believed) all the general statutes which have from time to time been passed, governing English joint-stock and other companies, and having any direct bearing on the law of partnership as applied to them (*a*):—

1541. 33 Hen. 8, c. 27. This Act renders void rules tending to restrict the power of majorities of certain corporate bodies to make grants or to elect governors, &c.

1719. 6 Geo. 1, c. 18.—This is the celebrated "Bubble Act." (See *ante*, p. 180.)

Section 4 was repealed as to the recovery of double damages by 8 Geo. 1, c. 15, § 25; section 12, prohibiting marine insurance by partners, was repealed by 5 Geo. 4, c. 114. Sections 18 and 19, prohibiting joint-stock companies with transferable shares, were repealed by 6 Geo. 4, c. 91, and sections 2, 3, 12, 18—28, were repealed by the S. L. R. Act, 1867.

1721. 8 Geo. 1, c. 15.—Section 25 repealed so much of section 4 of 6 Geo. 1, c. 18, as gave a right to recover double damages.

Repealed (except § 25) by the S. L. R. Act, 1867.

1766. 7 Geo. 3, c. 48.—The object of this Act was to prevent the multiplication of votes by splitting stock and distributing shares, and to prevent the declaration of dividends except half yearly. The Act only applies to certain companies formed before the Act came into operation. The manufacture of votes in the way forbidden by this Act is not illegal where the Act itself does not apply. See *ante*, pp. 428 and 646.

Repealed, so far as it affects the Bank of England, by 55 & 56 Vict. c. 48.

1788. 28 Geo. 3, c. 53.—Section 2 (repealed by 6 & 7 Wm. 4, c. 109) prohibiting partnerships of coal merchants.

Repealed by the S. L. R. Act, 1861.

(*a*) See *ante*, p. 1 *et seq.*, for a sketch of the history of companies. The Acts relating to Friendly Societies, Industrial and Provident Societies, Industrial Assurance Companies, Building Societies and Trustee Savings Banks are not collected in this list. Where an Act has been repealed, the Acts by which it was amended are not referred to under the principal Act. The Statute Law Revision Acts are referred to as S. L. R. Act.

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1800. 39 & 40 Geo. 3, c. 28. The Bank of England Act, 1800.—Section 15 prohibited banking partnerships of more than six persons; but the Act was, in this respect, repealed by 7 Geo. 4, c. 46.

Sections 1—12, and part of § 13, were repealed by the S. L. R. Act, 1871, and § 17 by the S. L. R. Act, 1887.

1824. 5 Geo. 4, c. 114.—This Act repealed 6 Geo. 1, c. 18, § 2.

Repealed by the S. L. R. Act, 1873.

1825. 6 Geo. 4, c. 91.—This repealed 6 Geo. 1, c. 18, §§ 18 & 19.

Section 2 (repealed by 7 Wm. 4 & 1 Vict. c. 73) empowered the Crown, in charters of incorporation, to provide that the members of the incorporated body should be individually liable for its debts.

Repealed by the S. L. R. Act, 1873.

1826. 7 Geo. 4, c. 46. The Country Bankers Act, 1826.—Repealed 39 & 40 Geo. 3, c. 28, § 15.

Provided for the establishment of joint-stock banking companies with public officers, by whom they could sue and be sued.

For amendments see *infra*, p. 1252.

Repealed, as to companies formed since May, 1844, by 7 & 8 Vict. c. 113; and as to companies formed before that time, but registered under the Acts of 1856 and 1857, by 20 & 21 Vict. c. 49.

Still in force as to companies formed before May, 1844, and not registered under the Acts of 1856—8 or 1862.

1833. 3 & 4 Wm. 4, c. 83.—An Act to compel banks issuing promissory notes, payable to bearer on demand, to make returns of their notes in circulation, and to authorise banks to issue notes payable in London for less than 50*l*.

See too 3 & 4 Wm. 4, c. 98; 4 & 5 Vict. c. 50; 7 & 8 Vict. c. 32; 8 & 9 Vict. c. 76.

Repealed as to §§ 1 and 3 by S. L. R. Act, 1874.

3 & 4 Wm. 4, c. 98. The Bank of England Act, 1833.—Relates to the issue of notes, &c., by bankers. See the note on the last Act.

Section 6 explained by 8 & 9 Vict. c. 37, § 6, and ib. c. 38, § 15.

Repealed as to §§ 5, 9, to 13, and 15 by S. L. R. Act, 1874, and as to § 7 by the S. L. R. Act, 1861.

1834. 4 & 5 Wm. 4, c. 94.—Authorised the Crown, by letters patent, to empower companies to sue and be sued by their principal officers.

Repealed by 7 Wm. 4 & 1 Vict. c. 73.

1836. 6 & 7 Wm. 4, c. 109.— Repealed 28 Geo. 3, c. 53.

Repealed by the S. L. R. Act, 1874.

1837. 7 Wm. 4 & 1 Vict. c. 73.—The Chartered Companies Act, 1837.

Repealed 6 Geo. 4, c. 91, § 2, and 4 & 5 Wm. 4, c. 94.

Empowers the Crown to grant companies the privilege of suing and being sued in the name of an officer of the company, and to limit the liability of the shareholders to creditors.

Section 1 repealed by the S. L. R. Act, 1874.

Construction of § 29 declared by 47 & 48 Vict. c. 56.

1838. 1 & 2 Vict. c. 10.—This Act resembled the 4 & 5 Vict. c. 14, but applied only to companies formed before the then Session of Parliament.

Repealed by the S. L. R. Act, 1861.

1 & 2 Vict. c. 96.—Amended 7 Geo. 4, c. 46.

Continued by 2 & 3 Vict. c. 68; and 3 & 4 Vict. c. 111.

Made perpetual by 5 & 6 Vict. c. 85.

Section 1 amended and §§ 5 and 6 repealed by S. L. R. Act (No. 2), 1874.

1 & 2 Vict. c. 110. The Judgments Act, 1838.—Sections 14 and 15 rendered shares of debtors, held in public companies, available for the payment of judgment creditors, by means of charging orders.

Amended by 3 & 4 Vict. c. 82.

Though various parts of 7 & 8 Vict. c. 110 have been repealed, §§ 14 and 15 are still in force. See rules of the Supreme Court, 1883, O. XLVI.

1839. 2 & 3 Vict. c. 68.—Continued 1 & 2 Vict. c. 96; as to which see above. Repealed by the S. L. R. Act, 1874 (No. 2).

1840. 3 & 4 Vict. c. 82.—Amended 1 & 2 Vict. c. 110, §§ 14 & 15.

3 & 4 Vict. c. 111.—Continued 1 & 2 Vict. c. 96; and further amended 7 Geo. 4, c. 46.

Section 1 is repealed, and section 2 is partly repealed by the S. L. R. Act, 1874 (No. 2), and S. L. R. Act, 1888 (No. 2).

1841. 4 & 5 Vict. c. 14.—Authorises spiritual persons to hold shares in companies.

Sections 2 & 3 repealed by S. L. R. Act, 1874 (No. 2).

4 & 5 Vict. c. 50.—Relates to the issue of notes by bankers. See observations on 3 & 4 Wm. 4, c. 83.

Repealed by S. L. R. Act, 1874 (No. 2).

5 Vict. c. 5, § 4.—Authorises the restraining of transfers of shares.

1842. 5 & 6 Vict. c. 85.—Perpetuated 1 & 2 Vict. c. 96.

Repealed by S. L. R. Act, 1874 (No. 2).

1844. 7 & 8 Vict. c. 110.—Commonly called the Joint Stock Companies Registration Act of 1844.

The first Act which provided for incorporation by mere registration.

Repealed by the Acts of 1856—8, and by the Companies Act, 1862.

7 & 8 Vict. c. 111.—Providing for the winding up of companies in bankruptcy.

Repealed by the Companies Act, 1862.

7 & 8 Vict. c. 113.—An Act to regulate Joint-stock banks in England.

Repealed 7 Geo. 4, c. 46, as regards companies formed since May, 1884.

Repealed by 20 & 21 Vict. c. 49, and by the Companies Act, 1862.

1845. 8 & 9 Vict. c. 16.—Companies Clauses Consolidation Act, 1845.

For amendments see *infra*, p. 1252.

Sections 152 and 164 are partially, and section 165 is wholly, repealed by the S. L. R. Act, 1875; and sections 148,

149, 153, and 157, and Schedule G. are wholly, and § 147 partially, repealed by the S. L. R. Act, 1892; and § 141 by the S. L. R. Act, 1894.

The Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), and the Railway Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), do not form part of the law of partnership.

1846. 9 & 10 Vict. c. 28.—An Act to facilitate the dissolution of certain railway companies.

This Act (Lord Dalhousie's) only applied to railway companies projected before July, 1846, and never incorporated by Act of Parliament.

Repealed by the Companies Act, 1862.

9 & 10 Vict. c. 75.—Extended 7 & 8 Vict. c. 113, to Scotland and Ireland.

Repealed by the Companies Act, 1862.

1847. 10 & 11 Vict. c. 78.—Amended 7 & 8 Vict. c. 110.

Repealed by the Companies Act, 1862.

1848. 11 & 12 Vict. c. 45.—Amended 7 & 8 Vict. c. 111.

Repealed by the Companies Act, 1862.

This Act and the next are usually called the Winding-up Acts of 1848—9.

1849. 12 & 13 Vict. c. 108.—Amended the last Act.

Repealed by the Companies Act, 1862.

1850. 13 & 14 Vict. c. 83.—Facilitates the abandonment of railways, and the dissolution of railway companies, empowered to make railways by Acts passed before August, 1850.

Amended and extended by 30 & 31 Vict. cc. 126 and 127; and 32 & 33 Vict. c. 114.

Section 34 is partially, and section 40 is wholly, repealed by the S. L. R. Act, 1875.

1855. 18 & 19 Vict. c. 133.—The first limited liability Act.

Repealed by 19 & 20 Vict. c. 47.

1856. 19 & 20 Vict. c. 47.—The Joint-stock Companies Act, 1856.

Repealed, as to all companies registered under it, 7 & 8 Vict. cc. 110 and 111; 11 & 12 Vict. c. 45; 12 & 13 Vict. c. 108; 18 & 19 Vict. c. 133.

Explained, as to insurance companies, by 20 & 21 Vict. c. 80.

Extended to banking companies by 20 & 21 Vict. c. 49.

Repealed by the Companies Act, 1862.

1856. 19 & 20 Vict. c. 100.—Amended 7 & 8 Vict. c. 113, now repealed.

1857. 20 & 21 Vict. c. 14.—Amended 19 & 20 Vict. c. 47, as to which see above.

Repealed by the Companies Act, 1862.

20 & 21 Vict. c. 49.—The Joint-stock Banking Companies Act, 1857.

Extended 19 & 20 Vict. c. 47, to banking companies.

Repealed as to companies registered under it, 7 Geo. 4, c. 46; 7 & 8 Vict. cc. 111, 113; 11 & 12 Vict. c. 45; 12 & 13 Vict. c. 108.

Repealed by the Companies Act, 1862.

20 & 21 Vict. c. 54.—An Act to make better provision for the

punishment of frauds committed by trustees, bankers, and other persons entrusted with property.

Applied to frauds by directors of companies.

Repealed by 24 & 25 Vict. c. 95.

1857. 20 & 21 Vict. c. 78.—Amended the Act 7 & 8 Vict. c. 111, and also the "Joint-stock Companies Winding-up Acts, 1848 and 1849."

Repealed by the Companies Act, 1862.

20 & 21 Vict. c. 80.—Explained 19 & 20 Vict. c. 47, as regards insurance companies.

Repealed by Companies Act, 1862.

1858. 21 & 22 Vict. c. 60.—Amended the Joint-stock Companies Acts, 1856 and 1857, and the Joint-stock Banking Companies Act, 1857.

Repealed by the Companies Act, 1862.

21 & 22 Vict. c. 91.—Enabled Joint-stock banking companies to be formed on the principle of limited liability.

Amended 20 & 21 Vict. c. 49.

Repealed by the Companies Act, 1862.

1861. 24 & 25 Vict. c. 96. The Larceny Act, applies to frauds by directors, &c.

Several sections of this Act are repealed, but §§ 81—86 which relate to fraudulent directors are unaltered, except that § 85 is partially repealed by 53 & 54 Vict. c. 71, §§ 27 and 29.

1862. 25 & 26 Vict. c. 89.—The Companies Act, 1862.

See Appendix VI., and as to amendments, *infra*, p. 1253.

1863. 26 & 27 Vict. c. 118.—The Companies Clauses Act, 1863. Amended 8 & 9 Vict. c. 16.

Amended by 30 & 31 Vict. c. 127; and 32 & 33 Vict. c. 48.

Sections 21 and 22 are repealed in part by the S. L. R. Act, 1875.

1864. 27 & 28 Vict. c. 19.—The Companies Seals Act.

See Appendix VI.

1865. 28 & 29 Vict. c. 78.—Mortgage Debenture Act, 1865.

Amended by 33 & 34 Vict. c. 20.

28 & 29 Vict. c. 86.—Law of Partnership Amendment Act (Bovill's Act).

Repealed by the Partnership Act, 1890.

1867. 30 & 31 Vict. c. 29.—Makes contracts for the sale of shares in joint-stock banking companies void unless the numbers of the shares are specified (Leeman's Act).

30 & 31 Vict. c. 47.—Repealed § 114 of the Companies Act, 1862.

30 & 31 Vict. c. 127.—The Railway Companies Act, 1867. Restricts executions against rolling stock and plant. Enables binding schemes of arrangement to be made.

Amends 13 & 14 Vict. c. 83, as to the abandonment of railways, &c.

Amended by 32 & 33 Vict c. 114.

Section 37 repealed by the S. L. R. Act, 1875.

The temporary protection given to rolling stock and plant by this Act was made perpetual by 38 & 39 Vict. c. 31.

30 & 31 Vict. c. 131.—The Companies Act, 1867, amends the Companies Act, 1862.

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1868. 31 & 32 Vict. c. 68.—An Act to facilitate liquidation in certain cases of bankruptcy, arrangement, and winding up.
This Act applies only to liquidations, &c., pending when it passed.

1869. 32 & 33 Vict. c. 19.—The Stannaries Act, 1869.
For amendments see *infra*, p. 1253.
Section 39 is repealed in part by the S. L. R. Act, 1883; and § 41 in part and § 45 wholly by S. L. R. Act, 1893 (No. 2).

32 & 33 Vict. c. 48.—The Companies Clauses Act, 1869, amended the Companies Clauses Act, 1863.

32 & 33 Vict. c. 114.—Relates to the abandonment of railways.
Amends 13 & 14 Vict. c. 83; and 30 & 31 Vict. c. 127.
Section 10 is repealed by the S. L. R. Act, 1883.

1870. 33 & 34 Vict. c. 20.—Mortgage Debenture (Amendment) Act, 1870.
Amends 28 & 29 Vict. c. 78.

33 & 34 Vict. c. 61.—The Life Assurance Companies Act, 1870.
See Appendix VIII., and for amendments, *infra*, p. 1253.
Section 8 is repealed in part by the S. L. R. Act, 1883.

33 & 34 Vict. c. 104.—The Joint-stock Companies Arrangement Act, 1870.
See Appendix VI.

1871. 34 & 35 Vict. c. 58.—Life Assurance Companies Act, 1871.
Amends the Life Assurance Companies Act, 1870.
See Appendix VIII.

1872. 35 & 36 Vict. c. 41.—Life Assurance Companies Act, 1872. Amends the Life Assurance Companies Acts, 1870—1871.
See Appendix VIII.

1875. 38 & 39 Vict. c. 31, made § 4 of 30 & 31 Vict. c. 127 perpetual.

1877. 40 & 41 Vict. c. 26.—The Companies Act, 1877.
See Appendix VI.

1879. 42 & 43 Vict. c. 76.—The Companies Act, 1879.
See Appendix VI.

1880. 43 Vict. c. 19.—The Companies Act, 1880.
See Appendix VI.

1883. 46 & 47 Vict. c. 28.—Companies Act, 1883.
Repealed, except as to Ireland, by 51 & 52 Vict. c. 62, and as to Ireland by 52 & 53 Vict. c. 60.

46 & 47 Vict. c. 30.—The Companies (Colonial Registers) Act, 1883.
See Appendix VI.

1884. 47 & 48 Vict. c. 56.—Chartered Companies Act, 1884.
Declares construction of § 29 of 7 Will. 4 & 1 Vict. c. 73.

1886. 49 Vict. c. 23.—The Companies Act, 1886.
See Appendix VI.

1887. 50 & 51 Vict. c. 43.—Stannaries Act, 1887.
Amends 32 & 33 Vict. c. 19.
Amended by 59 & 60 Vict. c. 45.

50 & 51 Vict. c. 47.—Trustee Savings Bank Act, 1887.
Section 3 declares that a trustee savings bank is an unregistered association which may be wound up under the provisions of the Companies Acts.

1888. 51 & 52 Vict. c. 48.—Companies Clauses Consolidation Act, 1888, relating to votes by proxy.
Amended by Companies Clauses Consolidation Act, 1889.

1888. 51 & 52 Vict. c. 62.—Preferential Payments in Bankruptcy Act, 1888.
Repeals the Companies Act, 1883 (46 & 47 Vict. c. 28), except as to Ireland.
Amended by 60 Vict. c. 19.
See Appendix VI,

1889. 52 & 53 Vict. c. 37.—Companies Clauses Consolidation Act, 1889.
Amends Companies Clauses Consolidation Act, 1888.

52 & 53 Vict. c. 42.—Revenue Act, 1889.
Section 18 amends Companies (Colonial Registers) Act, 1883, § 7.

52 & 53 Vict. c. 60.—Preferential Payments in Bankruptcy (Ireland) Act, 1889.
Repeals Companies Act, 1883, as to Ireland.
Amended by 60 Vict. c. 19.

1890. 53 & 54 Vict. c. 39.—Partnership Act, 1890.
Repeals 28 & 29 Vict. c. 86.

53 & 54 Vict. c. 62.—Companies (Memorandum of Association) Act, 1890.
See Appendix VI.

53 & 54 Vict. c. 63.—Companies (Winding-up) Act, 1890.
See Appendix VI.

53 & 54 Vict. c. 64.—Directors' Liability Act, 1890.
See Appendix VI.

1891. 54 & 55 Vict. c. 43.—Forged Transfers Act, 1891.
Amended by Forged Transfers Act, 1892.

1892. 55 & 56 Vict. c. 36.—Forged Transfers Act, 1892.

55 & 56 Vict. c. 48.—Bank Act, 1892.
Repeals 7 Geo. 3 c. 48, so far as it applies to the Bank of England.

1893. 56 & 57 Vict. c. 58.—Companies (Winding-up) Act, 1893.
Amends § 10 of Companies (Winding-up) Act, 1890.
See Appendix VI.

1894. 57 & 58 Vict. c. 12.—Indian Railways Act, 1894.
Enables Indian railway companies registered under the Companies Acts in certain cases to pay dividends out of capital during construction.

1896. 59 Vict. c. 8.—Life Assurance Companies (Payment into Court) Act, 1896.

59 & 60 Vict. c. 45.—The Stannaries Court (Abolition) Act, 1896.

1897. 60 Vict. c. 19.—Preferential Payments in Bankruptcy Amendment Act, 1897.
Amends 51 & 52 Vict. c. 62 and 52 & 53 Vict. c. 60.
See Appendix VI.

1898. 61 & 62 Vict. c. 26.—Companies Act, 1898.
See Appendix VI.

1900. 63 & 64 Vict. c. 48.—Companies Act, 1900.
See Appendix VI.

Note on these Acts.

An examination of the above list will show that in addition to the Companies Clauses Consolidation Act (8 & 9 Vict. c. 16, and the Acts amending it), there were, prior to the passing of the Companies Act, 1862,

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no less than seven classes of Acts regulating joint-stock companies. These Acts were as follows:—

1. 7 Geo. 4, c. 46, and Acts amending it; as to banking companies established before May, 1844, and not registered under 20 & 21 Vict. c. 49.

2. 7 Wm. 4 & 1 Vict. c. 73; as to companies established by letters patent from the Crown.

3. 7 & 8 Vict. c. 110, and Acts amending it; as to insurance companies, and such other companies, if any, as were registered under it, and not under 19 & 20 Vict. c. 47.

4. The Winding-up Acts, 7 & 8 Vict. c. 111; 11 & 12 Vict. c. 45; 12 & 13 Vict. c. 108; 20 & 21 Vict. c. 78; as to companies not registered under 19 & 20 Vict. c. 47, and not a railway company incorporated by Act of Parliament.

5. The Winding-up Act, 13 & 14 Vict. c. 83; as to railway companies incorporated by Act of Parliament, and empowered to make a railway by an Act passed before August, 1850.

6. The Joint-stock Companies Acts of 1856 and 1857; as to all joint-stock companies registered under them.

7. The Joint-stock Banking Companies Acts of 1857 and 1858; as to banking companies formed since May, 1844, or formed previously thereto and registered under these Acts.

Of these the 3rd, 4th, 6th and 7th are all repealed by the Companies Act, 1862.

The following tabular view of the Acts now in force is appended for facility of reference (*b*):—

PRINCIPAL ACTS NOW IN FORCE.		AMENDING ACTS.
7 Geo. 4, c. 46	Banking Companies (*c*) Amended	generally by 3 & 4 Wm. 4, c. 98. 1 & 2 Vict. c. 96 (*d*). 3 & 4 Vict. c. 111. 25 & 26 Vict. c. 89. as to issue of notes, &c., by 7 & 8 Vict. c. 32. 8 & 9 Vict. c. 76. 19 & 20 Vict. c. 20. 37 & 38 Vict. c. 96.
7 Wm. 4 & 1 Vict. c. 73	Companies empowered by letters patent to sue and be sued	Section 29 is construed by 47 & 48 Vict. c. 56.
1 & 2 Vict. c. 110	Charging shares by Judge's order	Amended by 3 & 4 Vict. c. 82; and see R. S. C., 1883, Ord. XLVI.

(*b*) Repeals by the Statute Law Revision Acts are not mentioned in this table; they are referred to in the preceding list.

(*c*) The 7 Geo. 4, c. 46, is still in force. But having regard to the subsequent Acts, 7 & 8 Vict. c. 113, 20 & 21 Vict. c. 49, and 25 & 26 Vict. c. 89, those provisions of 7 Geo. 4, c. 46, which relate to the constitution of companies and their powers of suing and being sued by public officers, appear to apply only to companies formed before May, 1844, and not registered under 20 & 21 Vict. c. 49, or 25 & 26 Vict. c. 89.

(*d*) The 1 & 2 Vict. c. 96, was continued by 2 & 3 Vict. c. 68, and 3 & 4 Vict. c. 111, and was made perpetual by 5 & 6 Vict. c. 85, and by 37 & 38 Vict. c. 96, which repealed 5 & 6 Vict. c. 85, and those clauses in 1 & 2 Vict. c. 96, which limited its duration.

PRINCIPAL ACTS NOW IN FORCE.			AMENDING ACTS.
4 & 5 Vict. c.	14	Spiritual persons.	
5 Vict. c.	5	Restraining transfers, &c.	
8 & 9 Vict. c.	16	The Companies Clauses Consolidation Act . . .	Amended by 26 & 27 Vict. c. 118; 32 & 33 Vict. c. 48; 51 & 52 Vict. c. 48; and 52 & 53 Vict. c. 37.
13 & 14 Vict. c.	83	Winding-up Act for railway companies incorporated by a special Act of Parliament	Amended by 30 & 31 Vict. c. 127; 32 & 33 Vict. c. 114; and 38 & 39 Vict. c. 31.
24 & 25 Vict. c.	96	Fraudulent directors, &c. See §§ 81 to 86 . . .	Amended by 53 & 54 Vict. c. 71.
25 & 26 Vict. c.	89	The Companies Act, 1862 .	Amended by 30 & 31 Vict. cc. 47 and 131; 32 & 33 Vict. c. 19, § 38; 33 & 34 Vict. c. 104; 38 & 39 Vict. c. 77, § 10; 40 & 41 Vict. c. 26; 42 & 43 Vict. c. 76; 43 Vict. c. 19; 46 & 47 Vict. c. 30; 49 Vict. c. 23; 51 & 52 Vict. c. 62; 52 & 53 Vict. cc. 42 (§ 18) and 60; 53 & 54 Vict. cc. 62, 63 and 64; 56 & 57 Vict. c. 58; 59 & 60 Vict. c. 45; 60 Vict. c. 19; 61 & 62 Vict. c. 26; and 63 & 64 Vict. c. 48; and as to Indian Railway Companies, by 57 & 58 Vict. c. 12.
28 & 29 Vict. c.	78	The Mortgage Debenture Act, 1865	Amended by 33 & 34 Vict. c. 20.
30 Vict. c.	29	An Act to prevent the making of contracts for the sale of shares in joint-stock banking companies unless the shares sold are numbered.	
32 & 33 Vict. c.	19	An Act to amend the law relating to mining partnerships, within the Stannaries	Amended by 46 & 47 Vict. c. 39; 50 & 51 Vict. c. 43; and 59 & 60 Vict. c. 45.
33 & 34 Vict. c.	61	The Life Assurance Companies Act, 1870 . .	Amended by 34 & 35 Vict. c. 58; 35 & 36 Vict. c. 41; and (as to payments into Court) 59 Vict. c. 8.
46 & 47 Vict. c.	30	The Companies (Colonial Register) Act . . .	Amended by 52 & 53 Vict. c. 42.
53 & 54 Vict. c.	39	Partnership Act, 1890.	
54 & 55 Vict. c.	43	Forged Transfer Act . .	Amended by 55 & 56 Vict. c. 36.

No. V.

TABLE

SHOWING THE CORRESPONDENCE BETWEEN THE COMPANIES (WINDING UP) ACT, 1890, AND THE RULES THEREUNDER, AND THE BANKRUPTCY ACT, 1883, AND THE BANKRUPTCY RULES, 1886 AND 1890, AND THE EFFECT OF THE FORMER ACT AND RULES UPON THE COMPANIES ACTS, 1862 AND 1867, AND THE RULES OF 1862.

THE ACT.

Companies (Winding-up) Act, 1890.	Bankruptcy Act, 1883.	Companies Acts, 1862 and 1867.
§ 1 . .	. . . .	Replace § 81 of the Companies Act, 1862, and §§ 41—46 of the Act of 1867.
,, (5) .	§ 92 (2) . .	
,, (6) .	§ 100 . .	
,, (7) .	§ 95 (3) . .	
§ 2 . .	. . . .	
§ 3 . .	§ 97 . .	
§ 4 (1), (2)	§§ 54 (1), 70 (1) (*a*).	
,, (3) .	§ 68 (4).	
,, (4) .	§ 70 (1) (*g*).	
§ 5 . .	§ 12.	
§ 6 . .	Compare § 15.	
§ 7 . .	§ 16.	
§ 8 . .	Compare §§ 17 and 69.	
§ 9 . .	§ 22.	
§ 10 . .	. . . .	Replaces § 165 of the Companies Act, 1862.
§ 11 . .	§§ 74 and 75.	
§ 12 . .	Cf. § 57.	Modifies §§ 95, 159 and 160 of Act of 1862.
§ 13 . .	. . . .	Modifies §§ 91, 98, 99, 100, 102, and 107 of Act, 1862.
§ 14 . .		
§ 15 . .	Compare §§ 81 and 162.	

Companies (Winding-up) Act, 1890.	Bankruptcy Act, 1883.	Companies Acts, 1862 and 1867.
§ 16 . .	§ 76.	
§ 17.		
§ 18.		
§ 19 . .	§ 77.	
§ 20 . .	§ 78.	
§ 21 . .	§ 80.	
§ 22 . .	§ 82.	
§ 23 . .	§ 89.	
§ 24 . .	§ 90.	
§ 25 . .	§ 91.	
§ 26 . .	§§ 127 and 128.	
§ 27 . .	§ 71.	
§ 28 . .	§ 130.	
§ 29 . .	§ 131.	
§ 30 . .	§ 140.	
§ 33 . .	. . . .	Repeals Companies Act, 1862, §§ 81, 92, in part, and 97; Companies Act, 1867, §§ 41—46.
First Sch. r. (14) is not in First Sch. to B. A.	First Schedule, rr. 5, 6, and 13 are not in First Sched. to Winding-up Act.	

THE RULES.

Companies Winding-up Rules, 1890.	Bankruptcy Rules, 1886 and 1890.	Rules of 1862.
Preliminary.		
Rule 1.		
„ 2.		
„ 3 . .	Rule 5.	
Court and Chambers.		
Rule 4.		
„ 5.		
„ 6.		
Proceedings.		
Rule 7 . .	Rule 10.	
„ 8 . .	„ 18.	
„ 9 . .	„ 19.	
„ 10.		
„ 11 . .	Cf. r. 20.	
„ 12 . .	Rule 21.	
„ 13 . .	„ 23.	
„ 14 . .	„ 24.	
„ 15 . .	„ 26.	
Witnesses and Depositions.		
Rule 16 . .	Rule 67, 67A.	
„ 17.		
Sittings of Courts.		
Rule 18 . .	„ 98.	
„ 19 . .	„ 99.	
Service and Execution of Process.		
Rule 20 . .	„ 91	See formerly Rules 63 & 64.
„ 21.		
Taxation of Costs.		
Rule 22 . .	. . . . .	See formerly Rule 72.
„ 23 . .	„ 120.	
„ 24 . .	„ 121.	
„ 25 . .	„ 122.	
„ 26 . .	„ 123.	
„ 27.		
„ 28 . .	„ 116.	
„ 29 . .	„ 117.	
„ 30 . .	„ 124.	
Costs Payable out of the Assets of the Company.		
Rule 31 . .	„ 125.	
Official Receiver as Provisional Liquidator.		
Rule 32 . .	. . . . .	See formerly Rules 15 & 59.
Petition.		
Rule 33 . .	. . . . .	Compare r. 1.
„ 34 . .	. . . . .	Rule 2.
„ 35 . .	. . . . .	„ 3.
Rule 36 . .	. . . . .	Rule 4.
„ 37 . .	. . . . .	„ 5.
Order to Wind up a Company.		
Rule 38 . .	. . . . .	See formerly Rules 6 & 7.
„ 39 . .		
„ 40 . .	Compare r. 179.	
„ 41 . .	„ 182.	
Special Manager.		
Rule 42.		
Meetings of Creditors.		
Rule 43.		
„ 44.		
„ 45.		
„ 46.		
General Meeting of Creditors and Contributories.		
Rule 47 . .	. . . . .	See formerly rr. 45—47.
„ 48 . .	B. A. 1883, 1st Sch. (6)	
„ 49 . .	Rule 251.	
„ 50 . .	„ 253.	
„ 51 . .	„ 254.	
„ 52 . .	B. A. 1883, 1st Sch. (7)	
„ 53 . .	. . . . .	Adopts § 91 of Act of 1862.
„ 54 . .	Rule 255.	
„ 55 . .	„ 252.	
„ 56 . .	„ 256.	
„ 57 . .	„ 257.	
Statement of Affairs.		
Rule 58 . .	„ 217.	
„ 59 . .	„ 218.	
„ 60.		
„ 61.		
„ 62.		
Appointment of Liquidator.		
Rule 63 . .	. . . . .	See formerly Rules 8—19.
„ 64.		
„ 65.		
„ 66.		
Security by Liquidator or Special Manager.		
Rule 67 . .	Compare r. 342.	
„ 68 . .	„ 302.	
Public Examination.		
Rule 69.		
„ 70.		
„ 71.		
„ 72.		

Companies Winding-up Rules, 1890.	Bankruptcy Rules, 1886 and 1890.	Rules of 1862.
Rule 73 . .	Rule 184.	
,, 74 . .	,, ,,	
,, 75 . .	Compare r. 186.	
,, 76 . .	Rule 185.	
,, 77.		
Proceedings against Delinquent Directors, &c.		
Rule 78.		
,, 79.		
Payments into and out of Bank.		
Rule 80 . .	,, 341 . . .	See formerly Rules 36—42.
,, 81 . .	,, 340.	
,, 82 . .	,, 312.	
List of Contributories.		
Rule 83 . .	. . . . .	See formerly Rules 29—31.
,, 84.		
,, 85.		
,, 86.		
,, 87.		
,, 88.		
Collection and Distribution of Assets.		
Rule 89.		
,, 90.		
,, 91.		
Calls.		
Rule 92.		
,, 93 . .	. . . . .	Rule 33.
,, 94 . .	. . . . .	,, 34.
,, 95.		
Proofs.		
Rule 96 . .	B. A. 2nd Sched. (1).	See formerly Rules 20—28.
,, 97 . .	,, ,, (2).	
,, 98 . .	,, ,, (3).	
,, 99 . .	,, ,, (4).	
,, 100 . .	,, ,, (5).	
,, 101 . .	,, ,, (6).	
,, 102 . .	,, ,, (8).	
,, 103 . .	,, ,, (19).	
,, 104 . .	,, ,, (20).	
,, 105 . .	,, ,, (21).	
,, 106 . .	Rule 220.	
,, 107 . .	,, 221.	
,, 108 . .	,, 222 and 222A.	
,, 109 . .	,, 223.	
Admission and Rejection of Proofs, and Appeal to the Court.		
Rule 110 . .	B. A. 2nd Sched. (22).	
,, 111 . .	,, ,, (24) & Rule 230.	
,, 112 . .	B. A. 2nd Sched. (23).	
,, 113 . .	,, ,, (25).	

Companies Winding-up Rules, 1890.	Bankruptcy Rules, 1886 and 1890.	Rules of 1862.
Rule 114 . .	B. A. 2nd Sched. (26).	
,, 115 . .	,, ,, (27).	
,, 116 . .	Compare Rule 224.	
,, 117 . .	Rule 225 and 225A.	
,, 118 . .	,, 226.	
,, 119 . .	,, 227 and 227A.	
,, 120 . .	,, 228.	
,, 121 . .	,, 231.	
Dividends.		
Rule 122 . .	,, 232.	
Proxies.		
Rule 123 . .	,, 245 (2) and 248.	
,, 124 . .		
,, 125 . .	,, 247.	
Statements by Liquidator to Registrar of Joint Stock Companies.		
Rule 126.		
,, 127.		
Unclaimed Funds, &c.		
Rule 128.		
,, 129.		
,, 130.		
,, 131 . .	,, 345.	
Rule 132 . .	,, 346.	
,, 133.		
Investment of Funds.		
Rule 134 . .	. . . . .	See formerly Rules 43 & 44.
Accounts and Audit.		
Rule 135 . .	,, 288 . . .	See formerly Rules 11, 13, 17, 18, 19.
,, 136 . .	,, 289.	
,, 137 . .	,, 308.	
,, 138 . .	,, 290.	
,, 139 . .		
,, 140 . .	,, 291.	
,, 141 . .	,, 292.	
,, 142 . .	,, 295.	
Books.		
Rule 143 . .	,, 285.	
,, 144 . .	,, 286 and 287.	
Register and File of Proceedings.		
Rule 145 . .	. . . . .	See formerly Rules 57 & 58.
,, 146.		
,, 147 . .	,, 17.	
Release of Liquidator.		
Rule 148 . .	,, 309.	
,, 149 . .	,, 310.	
Books and Returns by Officers of Court.		
Rule 150.		
,, 151.		

Companies Winding-up Rules, 1890.	Bankruptcy Rules, 1886 and 1890.	Rules of 1862.
Gazetting.		
Rule 152 . .	Rule 280.	
„ 153 . .	„ 281.	
Liquidators and Committees of Inspection.		
Rule 154 . .	„ 305 . . .	See formerly Rule 18.
„ 155 . .	„ 306.	
„ 156 . .	„ 316 and 316A.	
„ 157.		
„ 158 . .	„ 317.	
„ 159.		
„ 160 . .	„ 317A.	
„ 161 . .	„ 318.	
Official Receiver and Board of Trade.		
Rule 162 . .	„ 321.	
„ 163 . .	„ 322.	
„ 164 . .	„ 328.	
„ 165 . .	„ 329.	
„ 166 . .	„ 323C.	
„ 167 . .	„ 335.	
„ 168 . .	„ 336.	
„ 169 . .	„ 337.	
„ 170 . .	B. A. § 139.	
„ 171.		
Special Manager.		
Rule 172 . .	Rule 344.	
Attendance, &c., of Parties.		
Rule 173 . .	. . . . .	Rule 60.
„ 174 . .	. . . . .	„ 68.
Miscellaneous Matters.		
Rule 175 . .	Rule 347.	
„ 176 . .	„ 351.	
„ 177 . .	B. A. § 143.	
„ 178.		
„ 179.		
„ 180 . .	. . . . .	Repeals Rules 1862 and Forms as to winding up by the Court after 31st Dec., 1890.

Companies Winding-up Rules, 1892.	Bankruptcy Rules, 1886 and 1890.	Rules of 1862.
Preliminary.		
Rule 1. . .		
Court and Chambers.		
Rule 2 . . .		
Rule 3 . . .	Rule 6.	
„ 4 . . .	„ 4, 8, 9.	
„ 5.		
Proceedings.		
Rule 6 . . .	„ 10.	
„ 7 . . .	„ 11.	
„ 8 . . .	„ 14.	
„ 9.		
„ 10.		
„ 11.		
„ 12 . . .	„ 16.	
„ 13.		
„ 14.		
Petitions in the High Court.		
Rule 15.		
Applications under § 15 of Act, 1890.		
Rule 16.		
Miscellaneous.		
Rule 17.	. . . . .	Rules of 1862 with modifications to apply to a voluntary winding up and one under supervision.
Hearing of Petitions and Order made thereon.		
Rule 18.		
„ 19.		
„ 20.		
„ 21.		
„ 22. . .	Rule 178.	
„ 23.		
„ 24.		
Ordinary Resolution of Creditors and Contributories.		
Rule 25 . .	B. A. § 168.	
Public Examinations.		
Rule 26.		
„ 27.		
Costs Payable out of Assets of Company.		
Rule 28.		
Time for Dealing with Proof.		
Rule 29 . .	Rule 227.	

Companies Winding-up Rules, 1892.	Bankruptcy Rules, 1886 and 1890.	Rules of 1862.	Companies Winding-up Rules, 1892.	Bankruptcy Rules, 1886 and 1890.	Rules of 1862.
Proxies.			Rule 33 . .	Rule 17A.	
Rule 30.			*Miscellaneous.*		
File of Proceedings.			Rule 34.		
Rule 31.			„ 35.		
„ 32.			„ 36.		
			„ 37.		

No. VI.

THE COMPANIES ACTS, 1862—1886.

THE COMPANIES ACT, 1862.

25 & 26 VICT. CAP. 89.*

An Act for the incorporation, regulation, and winding up of trading companies and other associations. [*7th August*, 1862.]

APPENDIX VI.

WHEREAS it is expedient that the laws relating to the incorporation, regulation, and winding up of trading companies and other associations should be consolidated and amended: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited for all purposes as "The Companies Act, 1862."

Commencement of Act.

2. *This Act, with the exception of such temporary enactment as is hereinafter declared to come into operation immediately* (*a*), *shall not come into operation until the second day of November, one thousand eight hundred and sixty-two; and the time at which it so comes into operation is hereinafter referred to as the commencement of this Act* (*b*).

Definition of insurance company.

3. For the purposes of this Act, a company that carries on the business of insurance in common with any other business or businesses shall be deemed to be an insurance company (*c*).

Prohibition of partnerships exceeding certain number. [20 Vict. c. 47, § 4, and 21 Vict. c. 13, § 3, and c. 49, § 13.]

4. No company, association, or partnership consisting of more than ten persons shall be formed, after the commencement of this Act, for the purpose of carrying on the business of banking (*d*), unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament or of letters patent; and no company, association, or partnership consisting of more than twenty persons shall be formed, after the commencement of this Act, for the purpose of carrying on any other business that has for its object the acquisition of gain (*e*) by the company,

* The references in the margins of the sections are to the corresponding sections of the repealed Acts. The sections referred to have seldom been incorporated without some alteration of more or less importance.

(*a*) See § 209.

(*b*) This section was repealed by the Stat. Law Revision Act, 1893.

(*c*) See *ante*, p. 154.

(*d*) See *District Savings Bank*, 10 W. R. 138. See *ante*, pp. 155, 185 *et seq.*

(*e*) See 10 Ch. 546, 7. See *ante*, p. 155.

APPENDIX VI.

association, or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Act of Parliament, or of letters patent, or is a company engaged in working mines within and subject to the jurisdiction of the Stannaries (*f*).

Division of Act.

5. This Act is divided into nine parts, relating to the following subject matters:

The first part.—To the constitution and incorporation of companies and associations under this Act:

The second part.—To the distribution of the capital and liability of members of companies and associations under this Act:

The third part.—To the management and administration of companies and associations under this Act:

The fourth part.—To the winding up of companies and associations under this Act:

The fifth part.—To the registration office:

The sixth part.—To application of this Act to companies registered under the Joint-stock Companies Acts:

The seventh part.—To companies authorised to register under this Act:

The eighth part.—To application of this Act to unregistered companies:

The ninth part.—To repeal of Acts and temporary provisions.

PART I.

CONSTITUTION AND INCORPORATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Memorandum of association (*g*).

Mode of forming company. [25 Vict. c. 47, § 3.]

6. Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association, and otherwise complying with the requisitions of this Act in respect of registration, form an incorporated company, with or without limited liability (*h*).

Mode of limiting liability of members.

7. The liability of the members of a company formed under this Act may, according to the memorandum of association, be limited either to the amount, if any, unpaid on the shares respectively held by them, or to such amount as the members may respectively undertake by the memorandum of association to contribute to the assets of the company in the event of its being wound up.

Memorandum of association of a company limited by shares. [20 Vict. c. 47, § 5.]

8. Where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things; (that is to say,) (*i*).

(*f*) See p. 154.

(*g*) For Forms, see Sched. 2. See *ante*, p. 158.

(*h*) See Form A. in Sched. 2. See *ante*, pp. 159, 160.

(*i*) See § 179, cl. 1. See too the Companies Act, 1900, as to persons named as directors in a prospectus or the articles of association § 2; as to the minimum subscription § 4; and as to the division of a company's undertaking into shares or interests § 27, and *ante*, p. 159.

(1.) The name of the proposed company, with the addition of the word "Limited" as the last word in such name (*k*):
(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:
(3.) The objects for which the proposed company is to be established:
(4.) A declaration that the liability of the members is limited:
(5.) The amount of capital with which the company proposes to be registered divided into shares of a certain fixed amount:

Subject to the following regulations:
(1.) That no subscriber shall take less than one share:
(2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

Memorandum of association of a company limited by guarantee.

9. Where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things (*l*); (that is to say,)
(1.) The name of the proposed company, with the addition of the word "Limited" as the last word in such name (*m*):
(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:
(3.) The objects for which the proposed company is to be established:
(4.) A declaration that each member undertakes to contribute to the assets of the company in the event of the same being wound up, during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount.

Memorandum of association of an unlimited company.

[20 Vict. c. 47, § 10.]

10. Where a company is formed on the principle of having no limit placed on the liability of its members, hereinafter referred to as an unlimited company, the memorandum of association shall contain the following things (*n*), (that is to say),
(1.) The name of the proposed company:
(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate:
(3.) The objects for which the proposed company is to be established.

Stamp, signature, and effect of memorandum of association.

[20 Vict. c. 47, §§ 7 and 11.]

11. The memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber (*o*) in the presence of and be attested by, one witness at the least, and that attestation shall be

(*k*) See *ante*, pp. 157, 158, and *infra*, note (*m*).

(*l*) See Forms B. and C. Sched. 2; and as to the capital, see § 14, and the Companies Act, 1900, § 27.

(*m*) See, as to associations not having gain for their object, Companies Act, 1867, § 23; and *ante*, p. 159.

(*n*) Form D. in Sched. 2; and see, as to capital, § 14.

(*o*) Signature by an agent is sufficient, *Whitley Partners, Limited*, 32 Ch. D. 337.

a sufficient attestation in Scotland as well as in England and Ireland: it shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in the memorandum contained, on the part of himself, his heirs, executors, and administrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this Act (see § 16).

Power of certain companies to alter memorandum of association. [20 Vict. c. 47, §§ 13 and 37.]

12. Any company limited by shares may so far modify the conditions contained in its memorandum of association, if authorised to do so by its regulations as originally framed, or as altered by special resolution in manner hereinafter mentioned (*p*), as to increase its capital (*q*), by the issue of new shares of such amount as it thinks expedient, or to consolidate and divide its capital into shares of larger amount than its existing shares, or to convert its paid-up shares into stock; but, save as aforesaid, and save as is hereinafter provided in the case of a change of name (*r*), no alteration shall be made by any company in the conditions contained in its memorandum of association (*s*).

Power of companies to change name.

13. Any company under this Act, with the sanction of a special resolution of the company passed in manner hereinafter mentioned (*t*), and with the approval of the Board of Trade, testified in writing under the hand of one of its secretaries or assistant secretaries, may change its name (*u*); and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company; and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name.

Articles of association.

Regulations to be prescribed by articles of association. [20 Vict. c. 47, § 9.]

14. The memorandum of association may, in the case of a company limited by shares, and shall, in the case of a company limited by guarantee or unlimited, be accompanied, when registered, by articles of association (*x*) signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum

(*p*) See §§ 50 and 51.

(*q*) As to notice of increase, see § 34.

(*r*) See §§ 13 and 20.

(*s*) The memorandum of association may be altered in some other respects, see *ante*, pp. 456 *et seq.*, and 459, 460; and 28 & 29 Vict. c. 78, § 3, as to mortgage debentures; Comp. Act, 1867, § 9 *et seq.*; and Companies Acts, 1877 and 1880, and *ante*, p. 556, as to reduction of capital; and Comp. Act, 1867, §§ 21 and 22 as to subdivision of shares, and Comp. Act, 1900, § 29 as to reconversion of stock into shares, and *ante*, p. 563; and generally as to its objects, Companies Memorandum of Association Act, 1890, *ante*, pp. 456 *et seq.* See as to altering the regulations of the company, §§ 50, 176, and 196; and see *ante*, pp. 461 *et seq.*

(*t*) See § 51.

(*u*) See, further, as to changing name, § 20, and *ante*, pp. 152 and 153.

(*x*) See Forms B. and C. in Sched. 2. See too the Companies Act, 1900, as to naming directors in the articles § 2; the minimum subscription § 4; payment of commission, &c., on underwriting shares § 8; and as to companies limited by guarantee and the division of such a company's undertaking into shares or interests § 27. See too, *ante*, p. 161.

of association deem expedient; the articles shall be expressed in separate paragraphs numbered arithmetically: they may adopt all or any of the provisions contained in the Table marked A. in the first schedule hereto: they shall, in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered (*y*), and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members (*z*) with which the company proposes to be registered, for the purpose of enabling the registrar to determine the fees payable on registration: in a company limited by guarantee or unlimited, and having a capital divided into shares, each subscriber shall take one share at the least, and shall write opposite to his name in the memorandum of association the number of shares he takes.

Application of Table A. [20 Vict. c. 47, § 9.]

15. In the case of a company limited by shares, if the memorandum of association is not accompanied by articles of association, or in so far as the articles do not exclude or modify the regulations contained in the Table marked A. in the first schedule hereto, the last-mentioned regulations shall, so far as the same are applicable, be deemed to be the regulations of the company in the same manner and to the same extent as if they had been inserted in articles of association, and the articles had been duly registered.

Stamp, signature, and effect of articles of association. [20 Vict. c. 47, §§ 10 and 11.]

16. The articles of association shall be printed; they shall bear the same stamp as if they were contained in a deed, and shall be signed by each subscriber in the presence of, and be attested by, one witness at the least, and such attestation shall be a sufficient attestation in Scotland as well as in England and Ireland; when registered, they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto, and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators to conform to all the regulations contained in such articles, subject to the provisions of this Act (*a*); and all moneys payable by any member to the company, in pursuance of the conditions and regulations of the company, or any of such conditions or regulations, shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt (*b*).

General provisions.

Registration of memorandum of association and articles of association, with fees as in Table B. or Table C. [20 Vict. c. 47, § 12.]

17. The memorandum of association (*c*) and the articles of association, if any, shall be delivered to the registrar of joint-stock companies hereinafter mentioned (*d*), who shall retain and register the same: there shall be paid to the registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the Table marked B. in the first schedule hereto, the several fees therein specified, or such smaller

(*y*) The capital of companies limited by shares appears in the memorandum of association. See § 8.

(*z*) As to an increase of members see § 34.

(*a*) See as to the nature of the contract entered into by becoming a member, *ante*, pp. 197, 198, and 456.

(*b*) See § 75.

(*c*) The Stamp Act, 1891, § 112, requires a statement of the nominal capital to be sent to the registrar, and imposes an *ad valorem* stamp duty of 2*s.* per £100. The same provisions apply to an increase of nominal capital.

(*d*) See § 174.

fees as the Board of Trade may from time to time direct; and by a company not having a capital divided into shares, in respect of the several matters mentioned in the Table marked C. in the first schedule hereto the several fees therein specified, or such smaller fees as the Board of Trade may from time to time direct: all fees paid to the said registrar in pursuance of this Act shall be paid into the receipt of her Majesty's exchequer, and be carried to the account of the consolidated fund of the United Kingdom of Great Britain and Ireland.

Effect of registration. [20 Vict. c. 47, § 13, and 21 Vict. c. 14, § 4.]

18. Upon the registration of the memorandum of association, and of the articles of association in cases where articles of association are required by this Act or by the desire of the parties to be registered, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited: the subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company (*dd*), and having perpetual succession and a common seal with power to hold lands (*e*), but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned (*f*); *a certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this Act in respect of registration have been complied with* (*g*).

Copies of memorandum and articles to be given to members. [20 Vict. c. 47, § 27, and 21 Vict. c. 14, § 10.]

19. A copy of the memorandum of association, having annexed thereto the articles of association, if any, shall be forwarded to every member, at his request, on payment of the sum of one shilling or such less sum as may be prescribed by the company for each copy; and if any company makes default in forwarding a copy of the memorandum of association and articles of association, if any, to a member, in pursuance of this section, the company so making default shall for each offence incur a penalty not exceeding one pound (*h*).

Prohibition against identity of names in companies. [20 Vict. c. 47, § 6.]

20. No company shall be registered under a name identical with that by which a subsisting company is already registered, or so nearly resembling the same as to be calculated to deceive, except in a case where such subsisting company is in the course of being dissolved and testifies its consent in such manner as the registrar requires; and if any company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a subsisting company is registered, or so nearly resembling the same as to be calculated to deceive, such first-mentioned company may, with the sanction of the registrar, change its name; and upon such change being made the registrar shall enter the new name on the register in the place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case; but no such alteration of name shall affect any rights or obligations of the company, or render defective any legal proceedings instituted or to be instituted by or against the company;

(*dd*) As to the commencement of business and the exercise of borrowing powers, see Comp. Act, 1900, § 6.

(*e*) As to companies not having gain for their object, see § 21, and *ante*, p. 155.

(*f*) See § 38.

(*g*) See Companies Act, 1900, § 1, and *ante*, p. 151. The words in italics were repealed by the Act of 1900, § 33.

(*h*) As to the recovery of penalties, see § 65.

and any legal proceedings may be continued or commenced against the company by its new name that might have been continued or commenced against the company by its former name (*i*).

Prohibition against certain companies holding land. [20 Vict. c. 47, § 38.]

21. No company formed for the purpose of promoting art, science, religion, charity, or any other like object, not involving the acquisition of gain by the company or by the individual members thereof, shall, without the sanction of the Board of Trade, hold more than two acres of land; but the Board of Trade may, by licence (*k*), under the hand of one of their principal secretaries, or assistant secretaries, empower any such company to hold lands in such quantity and subject to such conditions as they think fit.

PART II.

DISTRIBUTION OF CAPITAL AND LIABILITY OF MEMBERS OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Distribution of capital.

Nature of interest in company. [20 Vict. c. 47, § 15.]

22. The shares or other interest of any member in a company under this Act shall be personal estate (*l*), capable of being transferred in manner provided by the regulations of the company (*m*), and shall not be of the nature of real estate; and each share shall, in the case of a company having a capital divided into shares, be distinguished by its appropriate number (*n*).

Definition of "member." [20 Vict. c. 47, §§ 8 and 19.]

23. The subscribers of the memorandum of association of any company under this Act shall be deemed to have agreed to become members of the company whose memorandum they have subscribed, and upon the registration of the company shall be entered as members on the register of members hereinafter mentioned; and every other person who has agreed to become a member of the company under this Act, and whose name is entered on the register of members, shall be deemed to be a member of the company (*o*).

Transfer by personal representative.

24. Any transfer of the share or other interest of a deceased member of a company under this Act, made by his personal representative, shall, notwithstanding such personal representative may not himself be a member, be of the same validity as if he had been a member at the time of the execution of the instrument of transfer (*p*).

Register of members. [20 Vict. c. 47, §§ 16 and 18.]

25. Every company under this Act shall cause to be kept in one or more books a register of its members (*q*); and there shall be entered therein the following particulars:—

(1.) The names and addresses, and the occupations, if any, of the members of the company, with the addition, in the case of a

(*i*) See, further, as to changing name, § 13; and see *ante*, pp. 152, 153, and *R.* v. *Registrar of Friendly Societies*, L. R. 7 Q. B. 741.

(*k*) See Form F. in Sched. 2.

(*l*) See pp. 628 *et seq.*

(*m*) See Table A. Nos. 8–16, and Comp. Act, 1867, §§ 26 *et seq.*, and as to transfers of shares, *ante*, pp. 645 *et seq.*

(*n*) See *ante*, p. 67, and Comp. Act, 1900, § 27.

(*o*) See § 18, and *ante*, pp. 61, 163, *et seq.*

(*p*) See Table A. Nos. 12–16, and *ante*, pp. 650, 733.

(*q*) As to inspection of the register, see § 32; and as to its rectification, see §§ 35 and 98. When shares have been converted into stock, see § 29.

company having a capital divided into shares, of a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member:

(2.) The date at which the name of any person was entered in the register as a member:

(3.) The date at which any person ceased to be a member:

And any company acting in contravention of this section shall incur a penalty not exceeding five pounds for every day during which its default in complying with the provisions of this section continues; and every director or manager of the company who shall knowingly and wilfully authorise or permit such contravention shall incur the like penalty (*r*).

Annual list of members. [20 Vict. c. 47, § 17.]

26. Every company under this Act, and having a capital divided into shares (*s*), shall make, once at least in every year, a list (*t*) of all persons who, on the fourteenth day succeeding the day on which the ordinary general meeting, or if there is more than one ordinary meeting in each year, the first of such ordinary general meetings is held, are members of the company; and such list shall state the names, addresses, and occupations of all the members therein mentioned, and the number of shares held by each of them, and shall contain a summary specifying the following particulars (*u*).

(1.) The amount of the capital of the company, and the number of shares into which it is divided:

(2.) The number of shares taken from the commencement of the company up to the date of the summary:

(3.) The amount of calls made on each share:

(4.) The total amount of calls received:

(5.) The total amount of calls unpaid:

(6.) The total amount of shares forfeited:

(7.) The names, addresses, and occupations of the persons who have ceased to be members since the last list was made, and the number of shares held by each of them.

The above list and summary shall be contained in a separate part of the register, and shall be completed within seven days after such fourteenth day as is mentioned in this section, and a copy shall forthwith be forwarded to the registrar of joint-stock companies (*v*).

Penalty on company, &c., not forwarding list of members, &c., to registrar. [20 Vict. c. 47, § 18.]

27. If any company under this Act, and having a capital divided into shares, makes default in complying with the provisions of this Act with respect to forwarding such list of members or summary as is hereinbefore mentioned to the registrar, such company shall incur a penalty not exceeding five pounds for every day during which such default continues;

When share warrants have been issued, see Comp. Act, 1867, § 31.

As to registers generally, see *ante*, pp. 74 *et seq.*

(*r*) As to recovery of penalties, see § 65, and *infra*, note (*w*).

(*s*) As to other companies, see §§ 45 and 46.

(*t*) See now Comp. Act, 1900, §§ 19 and 20, and the Form E. in Sched. 2, *infra*, pp. 1339, 1340.

(*u*) See, further, when shares have been converted into stock, § 29; when share warrants have been issued, Comp. Act, 1867, § 32; when capital has been reduced by a return of paid-up capital, see Comp. Act, 1880, § 6.

(*v*) As to their inspection, see §§ 32 and 174 (5).

and every director and manager (*w*) of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty (*x*).

Company to give notice of consolidation, or of conversion of capital into stock. [21 Vict. c. 14, § 6.]

28. Every company under this Act, having a capital divided into shares, that has consolidated and divided its capital into shares of larger amount than its existing shares, or converted any portion of its capital into stock (*y*), shall give notice to the registrar of joint stock companies of such consolidation, division, or conversion, specifying the shares so consolidated, divided, or converted (*z*).

Effect of conversion of shares into stock. [21 Vict. c. 14, §§ 5–7.]

29. Where any company under this Act, and having a capital divided into shares, has converted any portion of its capital into stock, and given notice of such conversion to the registrar, all the provisions of this Act which are applicable to shares only shall cease as to so much of the capital as is converted into stock (*a*); and the register of members hereby required to be kept by the company (*b*), and the list of members to be forwarded to the registrar (*c*), shall show the amount of stock held by each member in the list instead of the amount of shares and the particulars relating to shares hereinbefore required.

No entry of trusts on register. [20 Vict. c. 47, § 19.]

30. No notice of any trust, expressed, implied, or constructive, shall be entered on the register, or be receivable by the registrar, in the case of companies under this Act and registered in England or Ireland (*d*).

Certificate of shares or stock. [20 Vict. c. 47, § 21.]

31. A certificate under the common seal of the company, specifying any share or shares or stock held by any member of a company, shall be *primâ facie* evidence of the title of the member to the share or shares or stock therein specified (*e*).

Inspection of register. [20 Vict. c. 47, § 23.]

32. The register of members, commencing from the date of the registration of the company, shall be kept at the registered office of the company hereinafter mentioned (*f*): except when closed as hereinafter mentioned (*g*), it shall during business hours, but subject to such reasonable restrictions as the company in general meeting may impose, so that not less than two hours in each day be appointed for inspection, be open to the inspection of any member gratis, and to the inspection of any other person on the payment of one shilling, or such less sum as the company may prescribe, for each inspection; and every such member or other person may require a copy of such register, or of any part thereof, or of such list or summary of members as is hereinbefore mentioned, on payment of sixpence for every hundred words required to be copied: if such inspection or copy is

(*w*) *I.e.*, manager *de facto*. See *Gibson* v. *Barton*, L. R. 10 Q. B. 329, and *Briton Medical and General Life Assoc.*, 39 Ch. D. 61.

(*x*) As to the recovery of penalties, see § 65, and *R.* v. *Tyler and International Commercial Co.* [1891], 2 Q. B. 588. As to companies working mines in the Stannaries, see the Stannaries Act, 1887, § 31, and the Stannaries Court (Abolition) Act, 1896, § 1, and Order of Board of Trade, 22 March, 1897, noticed *infra*, p. 1302, note (*f*).

(*y*) Under § 12.

(*z*) See § 34.

(*a*) See Table A. Nos. 23–25.

(*b*) See § 25.

(*c*) See § 26 and Comp. Act, 1900, § 19.

(*d*) See *Bradford Banking Co.* v. *Briggs*, 12 App. Ca. 29, *ante*, pp. 639 and 640. See, too, *ante*, p. 252; and as to entering notice of company's lien, see *W. Key & Sons, Ld.*, W. N. 1902, p. 16.

(*e*) As to the right to require this, see Table A. Nos. 2 and 3. See as to these certificates, *ante*, p. 82: and in connection with transfers in blank, *ante*, pp. 654 *et seq.*; and forged certificates, *ante*, pp. 667 *et seq.*, and in winding up, *ante*, p. 1079.

(*f*) § 39.

(*g*) § 33.

refused, the company shall incur for each refusal a penalty not exceeding two pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and every director and manager of the company who shall knowingly authorise or permit such refusal shall incur the like penalty; and in addition to the above penalty, as respects companies registered in England or Ireland, any judge sitting in chambers, or the vice-warden of the Stannaries (*h*), in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register (*i*).

Power to close register. [20 Vict. c. 47, § 24.]

33. Any company under this Act may, upon giving notice by advertisement in some newspaper circulating in the district in which the registered office of the company is situated, close the register of members for any time or times not exceeding in the whole thirty days in each year.

Notice of increase of capital and of members to be given to registrar. [20 Vict. c. 47, § 37.]

34. Where a company has a capital divided into shares, whether such shares may or may not have been converted into stock, notice of any increase in such capital beyond the registered capital (*j*), and where a company has not a capital divided into shares, notice of any increase in the number of members beyond the registered number, shall be given to the registrar in the case of an increase of capital, within fifteen days from the date of the passing of the resolution by which such increase has been authorised, and in the case of an increase of members, within fifteen days from the time at which such increase of members has been resolved on or has taken place; and the registrar shall forthwith record the amount of such increase of capital or members; if such notice is not given within the period aforesaid, the company in default shall incur a penalty not exceeding five pounds for every day during which such neglect to give notice continues; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty (*k*).

Remedy for improper entry or omission of entry in register. [20 Vict. c. 47, § 25, and 21 Vict. c. 14, §§ 8, 9.]

35. If the name of any person is, without sufficient cause, entered in or omitted from the register of members of any company under this Act, or if default is made or unnecessary delay takes place in entering on the register the fact of any person having ceased to be a member of the company, the person or member aggrieved, or any member of the company, or the company itself, may, as respects companies registered in England or Ireland, by motion in any of her Majesty's superior Courts of law or equity, or by application to a judge sitting in chambers, or to the vice-warden of the Stannaries (*l*) in the case of companies subject to his jurisdiction, and as respects companies registered in Scotland by summary petition to the Court of Session, or in such other manner as the said Courts may direct, apply for an order of the Court that the register may be rectified; and the Court may either refuse such application, with or without costs to be paid by the applicant, or it may, if satisfied of the

(*h*) See now the Stannaries Court (Abolition) Act, 1896, and the order of the Lord Chancellor under that Act, 16th Dec. 1896, printed *infra*.

(*i*) As to mandamus, see *ante*, p. 616; and the right to take copies, *ante*, p. 434. The section does not apply when the company is being wound up, *Kent Coalfields Syndicate* [1898], 1 Q. B. 754. As to recovery of penalties, see § 65, and *ante*, p. 1267, note (*w*).

(*j*) Under § 12. For stamp on increase, see Stamp Act, 1891, § 12.

(*k*) As to companies working mines in the Stannaries, see *ante*, p. 1267, note (*x*), and as to the recovery of penalties, § 65, and *ante*, p. 1267, note (*w*).

(*l*) See now the Stannaries Court (Abolition) Act, 1896, and the order of the Lord Chancellor thereunder printed *infra*.

justice of the case, make an order for the rectification of the register, and may direct the company to pay all the costs of such motion, application, or petition, and any damages the party aggrieved may have sustained: The Court may, in any proceeding under this section, decide on any question relating to the title of any person who is a party to such proceeding to have his name entered in or omitted from the register, whether such question arises between two or more members or alleged members, or between any members or alleged members and the company; and generally the Court may in any such proceeding decide any question that it may be necessary or expedient to decide for the rectification of the register; provided that the Court, *if a Court of common law*, may direct an issue to be tried, in which any question of law may be raised, *and a writ of error or appeal, in the manner directed by "The Common Law Procedure Act*, 1854," *shall lie* (*m*).

Notice to registrar of rectification of register.

36. Whenever any order has been made rectifying the register, in the case of a company hereby required to send a list of its members to the registrar, the Court shall, by its order, direct that due notice of such rectification be given to the registrar.

Register to be evidence.

[20 Vict. c. 47, § 26.]

37. The register of members shall be *primâ facie* evidence of any matters by this Act directed or authorised to be inserted therein.

Liability of members (*n*).

Liability of present and past members of company.

[20 Vict. c. 47, §§ 61–63.]

38. In the event of a company formed under this Act being wound up, every present and past member of such company shall be liable to contribute to the assets of the company to an amount sufficient for payment of the debts and liabilities of the company, and the costs, charges, and expenses of the winding up, and for the payment of such sums as may be required for the adjustment of the rights of the contributories amongst themselves, with the qualifications following; (that is to say,)

(1.) No past member shall be liable to contribute to the assets of the company if he has ceased to be a member for a period of one year or upwards prior to the commencement of the winding up (*o*):

(2.) No past member shall be liable to contribute in respect of any debt or liability of the company contracted after the time at which he ceased to be a member:

(3.) No past member shall be liable to contribute to the assets of the company unless it appears to the Court that the existing members are unable to satisfy the contributions required to be made by them in pursuance of this Act:

(*m*) See, also, *infra*, § 98, and as to Colonial Registers, see the Companies Colonial Registers Act, 1883, § 3 (3); and as to rectifying registers generally, *ante*, p. 78; and as to this section more particularly, pp. 165 *et seq.*, and pp. 1037, 1038, 1045. The words in italics are repealed by the Stat. Law Revision, &c., Act, 1881. See, too, Comp. Act, 1898, in cases of non-compliance with § 25 of the Comp. Act, 1867.

(*n*) See, further, as to the liability of members, §§ 42, 48, 180, 182, 195, and 196, cl. 5, and § 200; and see § 102 respecting calls in winding up. As to directors, where their liability is unlimited, see Comp. Act, 1867, § 5, and as to notes of a banking company, Comp. Act, 1879, § 6. See, too, *ante*, pp. 363, 364, and 1155.

(*o*) See §§ 84 and 130, and as to past members generally, *ante*, p. 1040, 1113 *et seq.*, 1156, and 1169. See, also, *Taurine Co.*, 25 Ch. D. 118.

APPENDIX VI.

(4.) In the case of a company limited by shares, no contribution shall be required from any member exceeding the amount, if any, unpaid on the shares in respect of which he is liable as a present or past member:

(5.) In the case of a company limited by guarantee, no contribution shall be required from any member exceeding the amount of the undertaking entered into on his behalf by the memorandum of association (*p*):

(6.) Nothing in this Act contained shall invalidate any provision contained in any policy of insurance or other contract whereby the liability of individual members upon any such policy or contract is restricted, or whereby the funds of the company are alone made liable in respect of such policy or contract (*q*):

[22 Vict. c. 60, § 17.]

(7.) No sum due to any member of a company, in his character of a member, by way of dividends, profits, or otherwise, shall be deemed to be a debt of the company, payable to such member in a case of competition between himself and any other creditor not being a member of the company (*r*); but any such sum may be taken into account for the purposes of the final adjustment of the rights of the contributories amongst themselves (*s*).

PART III.

MANAGEMENT AND ADMINISTRATION OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT.

Provisions for protection of creditors.

Registered office of company. [20 Vict. c. 47, § 28.]

39. Every company under this Act shall have a registered office to which all communications and notices may be addressed (*t*); if any company under this Act carries on business without having such an office, it shall incur a penalty not exceeding five pounds for every day during which business is so carried on (*u*).

Notice of situation of registered office. [20 Vict. c. 47, § 29.]

40. Notice of the situation of such registered office, and of any change therein, shall be given to the registrar, and recorded by him: until such notice is given the company shall not be deemed to have complied with the provisions of this Act with respect to having a registered office (*u*).

Publication of name by a limited company. [20 Vict. c. 47, § 30.]

41. Every limited company under this Act, whether limited by shares or by guarantee, shall paint or affix, and shall keep painted or affixed its name on the outside of every office or place in which the business of the company is carried on, in a conspicuous position, in letters easily legible, and shall have its name engraven in legible characters on its seal, and shall have its name mentioned in legible characters in all notices,

(*p*) See §§ 90 and 134, and *Lion Mutual Ins. Assoc.* v. *Tucker*, 12 Q. B. D. 176, and *Baird's case* [1899], 2 Ch. 593.

(*q*) See *ante*, pp. 355 *et seq.*

(*r*) This applies to guaranteed dividends. *Stuart's trust*, 4 Ch. D. 213, and *ante*, p. 608.

(*s*) See § 101, and *ante*, pp. 1030 *et seq.*, and 1158.

(*t*) See § 62.

(*u*) As to companies working mines in the Stannaries, see *ante*, p. 1267, note (*x*).

advertisements, and other official publications of such company, and in all bills of exchange, promissory notes, endorsements, cheques, and orders for money or goods purporting to be signed by or on behalf of such company, and in all bills of parcels, invoices, receipts, and letters of credit of the company (*v*).

Penalties on non-publication of name. [20 Vict. c. 47, § 31.]

42. If any limited company under this Act does not paint or affix, and keep painted or affixed, its name in manner directed by this Act, it shall be liable to a penalty not exceeding five pounds for not so painting or affixing its name, and for every day during which such name is not so kept painted or affixed; and every director or manager of the company who shall knowingly and wilfully authorise or permit such default shall be liable to the like penalty; and if any director, manager, or officer of such company, or any person on its behalf, uses or authorises the use of any seal purporting to be a seal of the company whereon its name is not so engraven as aforesaid, or issues or authorises the issue of any notice, advertisement, or other official publication of such company, or signs or authorises to be signed on behalf of such company, any bill of exchange, promissory note, endorsement, cheque, order for money or goods, or issues or authorises to be issued any bill of parcels, invoice, receipt, or letter of credit of the company, wherein its name is not mentioned in manner aforesaid, he shall be liable to a penalty of fifty pounds, and shall further be personally liable to the holder of any such bill of exchange, promissory note, cheque, or order for money or goods, for the amount thereof, unless the same is duly paid by the company (*w*).

Register of mortgages (*x*).

43. Every limited company under this Act shall keep a register of all mortgages and charges specifically affecting property of the company, and shall enter in such register in respect of each mortgage or charge a short description of the property mortgaged or charged, the amount of charge created, and the names of the mortgagees or persons entitled to such charge (*y*): if any property of the company is mortgaged or charged without such entry as aforesaid being made, every director, manager, or other officer of the company who knowingly and wilfully authorises or permits the omission of such entry shall incur a penalty not exceeding fifty pounds: the register of mortgages required by this section shall be open to inspection by any creditor or member of the company at all reasonable times; and if such inspection is refused, any officer of the company refusing the same, and every director and manager of the company authorising or knowingly and wilfully permitting such refusal, shall incur a penalty not exceeding five pounds, and a further penalty not exceeding two pounds for every day during which such refusal continues; and in addition to the above penalty, as respects companies registered in England and Ireland, any judge sitting in chambers, or the vice-warden of the

[Inspection of register.]

(*v*) Neither this nor the next section applies to companies licensed to omit the word limited under Comp. Act, 1867, § 23.

(*w*) See *ante*, pp. 363, 364. As to the recovery of penalties, § 65, and *ante*, p. 1267, note (*w*).

(*x*) See, too, Comp. Act, 1900, §§ 14–18, and the forms in the order of the Board of Trade of 28th Dec. 1900, printed *infra*, and *ante*, pp. 310 *et seq.* As to the recovery of penalties, see § 65, and *ante*, p. 1267, note (*w*).

(*y*) In the case of debentures passing by delivery, registration in the names of the original holders is sufficient, and there is no necessity to register the transfers, *semble* this rule applies to other cases, *Dublin Drapery Co.*, 13 L. R. Ir. 174.

APPENDIX VI.

Stannaries (z) in the case of companies subject to his jurisdiction, may by order compel an immediate inspection of the register (a).

Certain companies to publish statement in form D. in schedule. [22 Vict. c. 11, § 4.]

44. Every limited banking company and every insurance company, and deposit, provident, or benefit society under this Act shall, before it commences business, and also on the first Monday in February and the first Monday in August in every year during which it carries on business, make a statement in the Form marked D. in the 1st Schedule hereto, or as near thereto as circumstances will admit; and a copy of such statement shall be put up in a conspicuous place in the registered office of the company, and in every branch office or place where the business of the company is carried on; and if default is made in compliance with the provisions of this section the company shall be liable to a penalty not exceeding five pounds for every day during which such default continues, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty (aa).

Every member and every creditor of any company mentioned in this section shall be entitled to a copy of the above-mentioned statement on payment of a sum not exceeding sixpence.

List of directors to be kept and sent to registrar.

45. Every company under this Act, *and not having a capital divided into shares* (b), shall keep at its registered office a register containing the names and addresses and the occupations of its directors or managers, and shall send to the registrar of joint-stock companies a copy of such register, and shall from time to time notify to the registrar any change that takes place in such directors or managers.

Penalty on company not keeping or sending register of directors, &c.

46. If any company under this Act, *and not having a capital divided into shares* (b), makes default in keeping a register of its directors or managers, or in sending a copy of such register to the registrar in compliance with the foregoing rules, or in notifying to the registrar any change that takes place in such directors or managers, such delinquent company shall incur a penalty not exceeding five pounds for every day during which such default continues; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty (aa).

Promissory notes and bills of exchange. [20 Vict. c. 47, § 43.]

47. A promissory note or bill of exchange shall be deemed to have been made, accepted, or indorsed on behalf of any company under this Act, if made, accepted, or indorsed in the name of the company by any person acting under the authority of the company, or if made, accepted, or indorsed by or on behalf or on account of the company, by any person acting under the authority of the company (c).

Prohibition against carrying on business with less than seven members. [20 Vict. c. 47, § 39.]

48. If any company under this Act carries on business when the number of its members is less than seven for a period of six months after the number has been so reduced, every person who is a member of such company during the time that it so carries on business after such period of six months, and is cognizant of the fact that it is so carrying on business

(z) See now Stannaries Court (Abolition) Act, 1896, and the order of the Lord Chancellor printed *infra*.

(a) As to the right of inspection, see *ante*, p. 314; the right ceases when the company is being wound up, *Somerset* v. *Land Securities Co.*, W. N. 1897, 29.

(aa) As to the recovery of penalties, see § 66, and *ante*, p. 1267, note (w).

(b) The words in italics were repealed by the Comp. Act, 1900, § 33. See also § 26 of the Act of 1862 and § 20 of the Act of 1900, and the form No. 9 in schedule to the order of the Board of Trade dated 28th Dec. 1900.

As to the inspection of this register, see §§ 32 and 174 (5).

(c) See *ante*, pp. 278 *et seq.*

with fewer than seven members, shall be severally liable for the payment of the whole debts of the company contracted during such time, and may be sued for the same, without the joinder in the action or suit of any other member (*d*).

Provisions for protection of members.

General meeting of company. [20 Vict. c. 47, § 32.]

49. A general meeting of every company under this Act shall be held once at the least in every year (*e*).

Power to alter regulations by special resolution. [20 Vict. c. 47, § 33.]

50. Subject to the provisions of this Act, and to the conditions contained in the memorandum of association, any company formed under this Act may in general meeting from time to time, by passing a special resolution in manner hereinafter mentioned (*ee*), alter all or any of the regulations of the company contained in the articles of association or in the Table marked A. in the first schedule, where such table is applicable to the company, or make new regulations to the exclusion of or in addition to all or any of the regulations of the company (*f*); and any regulations so made by special resolution shall be deemed to be regulations of the company of the same validity as if they had been originally contained in the articles of association, and shall be subject in like manner to be altered or modified by any subsequent special resolution.

Definition of special resolution. [20 Vict. c. 47, § 34.]

51. A resolution passed by a company under this Act shall be deemed to be special whenever a resolution has been passed by a majority of not less than three-fourths of such members of the company for the time being entitled according to the regulations of the company to vote as may be present, in person or by proxy (*g*) (in cases where by the regulations of the company proxies are allowed), at any general meeting of which notice specifying the intention to propose such resolution has been duly given, and such resolution has been confirmed by a majority of such members for the time being entitled, according to the regulations of the company, to vote, as may be present, in person or by proxy, at a subsequent general meeting, of which notice has been duly given, and held at an interval of not less than fourteen days (*h*), nor more than one month, from the date of the meeting at which such resolution was first passed: At any meeting mentioned in this section, unless a poll is demanded by at least five members, a declaration of the chairman that the resolution has been carried shall be deemed conclusive evidence of the fact (*i*), without proof

(*d*) See § 79.

(*e*) See Companies Act, 1867, § 39, and Companies Act, 1900, §§ 12 and 13. The year begins on the 1st Jan. See *Gibson* v. *Barton*, L. R. 10 Q. B. 329.

(*ee*) See § 51.

(*f*) As to altering the conditions in the memorandum of association, see § 12 and note thereto; and as to companies existing before the passing of this Act, see §§ 176 and 196; cl. 3, 4 and 6. As to companies in the Stannaries, see Stannaries Act, 1869, § 7.

See, further, as to what can be done by special resolution, §§ 60, 79, 129, and Table A. Nos. 25, 26, and *ante*, pp. 460 *et seq* and 476. The company cannot deprive itself of the power to alter its articles, *Trevor* v. *Whitworth*, 12 App. Ca. 409.

(*g*) As to votes by proxies on a show of hands, see *Ernest* v. *Loma Gold Mines, Limited* [1897], 1 Ch. 1 and *ante*, p. 429.

(*h*) As to computation of time, see *ante*, p. 423; as to notices, *ante*, pp. 423 *et seq.*, and when the company wishes to act on the altered articles, *ante*, p. 476.

(*i*) See *Hadleigh Castle Gold Mines, Ld.* [1900], 2 Ch. 419; *Arnot* v. *United African Lands Co.* [1901], 1 Ch. 518, and *ante*, p. 428.

of the number or proportion of the votes recorded in favour of or against the same: Notice of any meeting shall, for the purpose of this section, be deemed to be duly given and the meeting to be duly held, whenever such notice is given and meeting held in manner prescribed by the regulations of the company: In computing the majority under this section, when a poll is demanded, reference shall be had to the number of votes to which each member is entitled by the regulations of the company.

Provision where no regulations as to meetings.

52. In default of any regulations (*j*) as to voting every member shall have one (*k*) vote; and in default of any regulations as to summoning general meetings a meeting shall be held to be duly summoned of which seven days' notice in writing has been served on every member in manner in which notices are required to be served by the Table marked A. in the first schedule hereto (*l*); and in default of any regulations as to the persons to summon meetings, five members shall be competent to summon the same (*m*); and in default of any regulations as to who is to be chairman of such meeting, it shall be competent for any person elected by the members present to preside (*n*).

Registration of special resolutions. [20 Vict. c. 47, § 35.]

53. A copy of any special resolution that is passed by any company under this Act shall be printed and forwarded to the registrar of joint-stock companies, and be recorded by him: If such copy is not so forwarded within fifteen days from the date of the confirmation of the resolution, the company shall incur a penalty not exceeding two pounds for every day after the expiration of such fifteen days during which such copy is omitted to be forwarded; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty (*o*).

Copies of special resolutions. [20 Vict. c. 47, § 36.]

54. Where articles of association have been registered, a copy of every special resolution for the time being in force shall be annexed to or embodied in every copy of the articles of association that may be issued after the passing of such resolution: Where no articles of association have been registered, a copy of any special resolution shall be forwarded in print to any member requesting the same on payment of one shilling, or such less sum as the company may direct: And if any company makes default in complying with the provisions of this section, it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty (*o*).

Execution of deeds abroad. [20 Vict. c. 47, § 42.]

55. Any company under this Act may, by instrument in writing under its common seal, empower any person, either generally or in respect of any specified matters, as its attorney, to execute deeds on its behalf in any place not situate in the United Kingdom; and every deed signed by such attorney, on behalf of the company, and under his seal, shall be binding on the company, and have the same effect as if it were under the common seal of the company (*p*).

(*j*) See as to the meaning of these words, *Brick and Stone Co.*, W. N. 1878, p. 140.

(*k*) See Table A., No. 44.

(*l*) See Table A., Nos. 35 and 95–7.

(*m*) See Table A., No. 34. See, too, Comp. Act, 1900, § 13.

(*n*) See Table A., Nos. 39, 40. As to the powers of a chairman, see *ante*, p. 427.

(*o*) As to recovery of penalties, see § 65, and *ante*, p. 1267, note (*w*).

(*p*) See also Comp. Seals Act, 1864, and Comp. Act, 1867, § 37.

Examination of affairs of company by inspectors. [20 Vict. c. 47, § 48.]

56. The Board of Trade may appoint one or more competent inspectors (*q*) to examine into the affairs of any company under this Act, and to report thereon, in such manner as the Board may direct, upon the applications following; (that is to say,)

(1.) In the case of a banking company that has a capital divided into shares, upon the application of members holding not less than one-third part of the whole shares of the company for the time being issued:

(2.) In the case of any other company that has a capital divided into shares, upon the application of members holding not less than one-fifth part of the whole shares of the company for the time being issued:

(3.) In the case of any company not having a capital divided into shares, upon the application of members being in number not less than one-fifth of the whole number of persons for the time being entered on the register of the company as members.

Application for inspection to be supported by evidence.

57. The application shall be supported by such evidence as the Board of Trade may require for the purpose of showing that the applicants have good reason for requiring such investigation to be made, and that they are not actuated by malicious motives in instituting the same: The Board of Trade may also require the applicants to give security for payment of the costs of the inquiry before appointing any inspector or inspectors.

Inspection of books and examination of officers. [20 Vict. c. 47, § 49.]

58. It shall be the duty of all officers and agents of the company to produce for the examination of the inspectors all books and documents in their custody or power: Any inspector may examine upon oath the officers and agents of the company in relation to its business, and may administer such oath accordingly: If any officer or agent refuses to produce any book or document hereby directed to be produced, or to answer any question relating to the affairs of the company, he shall incur a penalty not exceeding five pounds in respect of each offence (*qq*).

Report of result of examination, &c. [20 Vict. c. 47, § 50.]

59. Upon the conclusion of the examination, the inspectors shall report their opinion to the Board of Trade: Such report shall be written or printed, as the Board of Trade directs: A copy shall be forwarded by the Board of Trade to the registered office of the company, and a further copy shall, at the request of the members upon whose application the inspection was made, be delivered to them or to any one or more of them: All expenses of and incidental to any such examination as aforesaid shall be defrayed by the members upon whose application the inspectors were appointed, unless the Board of Trade shall direct the same to be paid out of the assets of the company, which it is hereby authorised to do.

Power of company to appoint inspectors. [20 Vict. c. 47, § 51.]

60. Any company under this Act may, by special resolution (*r*), appoint inspectors for the purpose of examining into the affairs of the company. The inspectors so appointed shall have the same powers and perform the same duties as inspectors appointed by the Board of Trade, with this exception, that, instead of making their report to the Board of Trade, they shall make the same in such manner and to such persons as the company in general meeting directs; and the officers and agents of the company shall incur the same penalties (*qq*) in case of any refusal to produce any book or document hereby required to be produced to such inspectors,

(*q*) As to power of Board of Trade to appoint auditors, see Comp. Act, 1900, § 21 (2).

(*qq*) As to the recovery of penalties, see § 65.

(*r*) See § 51.

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or to answer any question, as they would have incurred if such inspector had been appointed by the Board of Trade.

Report of inspectors to be evidence. [20 Vict. c. 47, § 52.]

61. A copy of the report of any inspectors appointed under this Act, authenticated by the seal of the company into whose affairs they have made inspection, shall be admissible in any legal proceeding, as evidence of the opinion of the inspectors in relation to any matter contained in such report.

Notices.

Service of notices, &c., on company. [20 Vict. c. 47, § 53.]

62. Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company at their registered office (*s*).

Services of notices, &c., by post. [20 Vict. c. 47, § 54.]

63. Any document to be served by post on the company shall be posted in such time as to admit of its being delivered in the due course of delivery within the period (if any) prescribed for the service thereof; and, in proving service of such document, it shall be sufficient to prove that such document was properly directed, and that it was put as a prepaid letter into the post office (*t*).

Authentication of notices of company, &c. [20 Vict. c. 47, § 55.]

64. Any summons, notice, order, or proceeding requiring authentication by the company, may be signed by any director, secretary, or other authorised officer of the company, and need not be under the common seal of the company; and the same may be in writing or in print, or partly in writing and partly in print (*u*).

Legal Proceedings.

Recovery of penalties. [20 Vict. c. 47, § 56.]

11 & 12 Vict. c. 43.

17 & 18 Vict. c. 104.

14 & 15 Vict. c. 93.

65. All offences under this Act made punishable by any penalty may be prosecuted summarily before two or more justices, as to England, in manner directed by an Act passed in the session holden in the eleventh and twelfth years of the reign of her Majesty Queen Victoria, chapter forty-three, intituled "An Act to facilitate the performance of the duties of justices of the peace out of sessions within England and Wales with respect to summary convictions and orders," or any Act amending the same (*v*); and as to Scotland, before two or more justices or the sheriff of the county, in manner directed by the Act passed in the session of Parliament holden in the seventeenth and eighteenth years of the reign of her Majesty Queen Victoria, chapter one hundred and four, intituled "An Act to amend and consolidate the Acts relating to Merchant shipping;" or any Act amending the same, as regards offences in Scotland against that Act, not being offences by that Act described as felonies or misdemeanours; and as to Ireland, in manner directed by the Act passed in the session holden in the fourteenth and fifteenth years of the reign of her Majesty Queen Victoria, chapter ninety-three, intituled "An Act

(*s*) See Rules of 1862, rr. 63 and 64, Rules of 1890, rr. 20 and 21; and as to service of writs of summons, see R.S.C. Order IX. r. 8, *ante*, p. 374. In the absence of any statutory provision, this section applies to a summons to appear before justices on an information, see *Pearks, Gunston, &c., Ld.* v. *Richardson* [1902], 1 K. B. 91.

(*t*) See Rules of 1862, rr. 63 and 64, and Rules of 1890, rr. 20 and 21.

(*u*) See as to proceedings in bankruptcy, The Bankruptcy Act, 1883, § 148, which seems to require the seal of the company.

(*v*) There is no appeal against the refusal of a magistrate to issue a summons, see *R.* v. *Tyler and International Commercial Co.* [1891], 2 Q. B. 588.

to consolidate and amend the Acts regulating the proceedings of petty sessions and the duties of justices of the peace out of quarter sessions in Ireland," or any Act amending the same.

Application of penalties. [20 Vict. c. 47, § 57.]

66. The justices or sheriff imposing any penalty under this Act may direct the whole or any part thereof to be applied in or towards payment of the costs of the proceedings, or in or towards the rewarding the person upon whose information or at whose suit such penalty has been recovered; and, subject to such direction, all penalties shall be paid into the receipt of her Majesty's Exchequer in such manner as the Treasury may direct, and shall be carried to and form part of the Consolidated Fund of the United Kingdom.

Evidence of proceedings at meetings, &c. [20 Vict. c. 47, § 40.]

67. Every company under this Act shall cause minutes of all resolutions and proceedings of general meetings of the company, and of the directors or managers of the company in cases where there are directors or managers, to be duly entered in books to be from time to time provided for the purpose; and any such minute as aforesaid, if purporting to be signed by the chairman of the meeting at which such resolutions were passed or proceedings had, or by the chairman of the next succeeding meeting, shall be received as evidence in all legal proceedings; and until the contrary is proved, every general meeting of the company or meeting of directors or managers in respect of the proceedings of which minutes have been so made shall be deemed to have been duly held and convened (*w*), and all resolutions passed thereat, or proceedings had, to have been duly passed and had; and all appointments of directors, managers, or liquidators shall be deemed to be valid, and all acts done by such directors, managers, or liquidators shall be valid, notwithstanding any defect that may afterwards be discovered in their appointments or qualifications (*x*).

Jurisdiction of Court of vice-warden of Stannaries (*y*).

68. In the case of companies under this Act, and engaged in working mines within and subject to the jurisdiction of the Stannaries, the Court of the vice-warden of the Stannaries (*y*) shall have and exercise the like jurisdiction and powers, as well on the common law as on the equity side thereof, which it now possesses by custom, usage, or statute in the case of unincorporated companies, but only so far as such jurisdiction or powers are consistent with the provisions of this Act and with the constitution of companies as prescribed or required by this Act; and for the purpose of giving fuller effect to such jurisdiction in all actions, suits, or legal proceedings instituted in the same Court, in causes or matters whereof the Court has cognizance, all process issuing out of the same, and all orders, rules, demands, notices, warrants, and summonses required or authorised by the practice of the Court to be served on any company, whether registered or not registered, or any member or contributory thereof, or any officer, agent, director, manager, or servant thereof, may be served in any part of England without any special order of the vice-warden for that purpose, or by such special order may be served in any part of the United

(*w*) *Ex parte Badman*, 45 Ch. D. pp. 28 and 29; *Leicester Mortgage Co.*, W. N. 1894, pp. 108 and 116.

(*x*) See, as to meetings and the minutes of their proceedings, *ante*, pp. 421 *et seq.*, and Table A., Nos. 29–43, and as to the last part of this section, *ante*, pp. 415 and 1184.

(*y*) The Court of the vice-warden of the Stannaries has now been abolished, and his jurisdiction vested in the County Courts of Cornwall, see Stannaries Court (Abolition) Act, 1896, and the order of the Lord Chancellor thereunder printed *infra*.

Kingdom of Great Britain and Ireland, or in the adjacent islands, parcel of the dominions of the Crown, on such terms and conditions as the Court shall think fit; and all decrees, orders and judgments of the said Court made or pronounced in such causes or matters may be enforced in the same manner in which decrees, orders, and judgments of the Court may now by law be enforced, whether within or beyond the local limits of the Stannaries; and the seal of the said Court, and the signature of the registrar thereof, shall be judicially noticed by all other Courts and judges in England, and shall require no other proof than the production thereof: the registrar of the said Court, or the assistant-registrar, in making sales under any decree or order of the Court shall be entitled to the same privilege of selling by auction or competition without a licence, and without being liable to duty, as a judge of the Court of Chancery is entitled to in pursuance of the Acts in that behalf.

Power to order security for costs in actions brought by limited companies. [21 Vict. c. 14, § 24.]

69. Where a limited company is plaintiff or pursuer in any action, suit, or other legal proceeding, any judge having jurisdiction in the matter, may, if it appears by any credible testimony that there is reason to believe that if the defendant be successful in his defence, the assets of the company will be insufficient to pay his costs, require sufficient security to be given for such costs, and may stay all proceedings until such security is given (*z*).

Allegations in actions against members.

70. In any action or suit brought by the company against any member to recover any call or other monies due from such member in his character of member, it shall not be necessary to set forth the special matter, but it shall be sufficient to allege that the defendant is a member of the company, and is indebted to the company in respect of a call made or other monies due whereby an action or suit hath accrued to the company (*a*).

Alteration of forms.

Forms in second schedule to be used.

Board of Trade may alter forms in schedule. [20 Vict. c. 47, § 58, and 21 Vict. c. 14, § 22.]

71. The forms set forth in the second schedule hereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer; the Board of Trade may from time to time make such alterations in the tables and forms contained in the first schedule hereto, so that it does not increase the amount of fees payable to the registrar in the said schedule mentioned, and in the forms in the second schedule, or make such additions to the last-mentioned forms, as it deems requisite: any such table or form, when altered, shall be published in the "London Gazette," and upon such publication being made, such table or form shall have the same force as if it were included in the schedule to this Act; but no alteration made by the Board of Trade in the table marked A. contained in the first schedule, shall affect any company registered prior to the date of such alteration, or repeal, as respects such company, any portion of such table (*b*).

Arbitrations.

Power for companies to refer matters to arbitration, in accordance with 22 & 23 Vict. c. 59.

72. Any company under this Act may from time to time, by writing under its common seal, agree to refer and may refer to arbitration, in accordance with "The Railway Companies Arbitration Act, 1859" (*c*), any

(*z*) See *ante*, pp. 376 and 893.

(*a*) See *ante*, p. 595.

(*b*) See, too, Rules, 1890, r. 3, and order of Board of Trade, 28th Dec. 1900, printed *infra*.

(*c*) 22 & 23 Vict. c. 59.

existing or future difference, question, or other matter whatsoever in dispute between itself and any other company or person; and the companies parties to the arbitration may delegate to the person or persons to whom the reference is made power to settle any terms or to determine any matter capable of being lawfully settled or determined by the companies themselves, or by the directors or other managing body of such companies.

Provisions of 22 & 23 Vict. c. 59, to apply.

73. All the provisions of "The Railway Companies Arbitration Act, 1859," shall be deemed to apply to arbitrations between companies and persons in pursuance of this Act: and in the construction of such provisions "the companies" shall be deemed to include companies authorised by this Act to refer disputes to arbitration.

PART IV.

WINDING UP OF COMPANIES AND ASSOCIATIONS UNDER THIS ACT (*d*).

Preliminary.

Meaning of contributory. [20 Vict. c. 47, § 65.]

74. The term "contributory" shall mean every person liable to contribute to the assets of a company under this Act, in the event of the same being wound up (*e*): it shall also, in all proceedings for determining the persons who are to be deemed contributories, and in all proceedings prior to the final determination of such persons, include any person alleged to be a contributory (*f*).

Nature of liability of contributory. [21 Vict. c. 14, § 13.]

75. The liability of any person to contribute to the assets of a company under this Act in the event of the same being wound up, shall be deemed to create a debt (in England and Ireland of the nature of a specialty) accruing due from such person at the time when his liability commenced, but payable at the time or respective times when calls are made as hereinafter mentioned for enforcing such liability; and it shall be lawful in the case of the bankruptcy of any contributory to prove against his estate the estimated value of his liability to future calls, as well as calls already made (*g*).

Contributories in case of death. [20 Vict. c. 47, § 65.]

76. If any contributory dies either before or after he has been placed on the list of contributories hereinafter mentioned, his personal representatives, heirs, and devisees shall be liable in a due course of administration to contribute to the assets of the company in discharge of the liability of such deceased contributory; and such personal representatives, heirs, and devisees shall be deemed to be contributories accordingly (*h*).

Contributories in case of bankruptcy.

77. If any contributory becomes bankrupt, either before or after he has been placed on the list of contributories, his assignees shall be deemed to

(*d*) See, as to companies registered or having a principal place of business in England or Wales, the Companies (Winding-up) Act, 1890; and as to companies registered under the Acts of 1856–8, *infra*, §§ 176, 177; and as to companies registered under this Act, but not formed under it or the last-mentioned Acts, *infra*, §§ 196–198; and as to companies not registered at all, *infra*, §§ 199–204.

(*e*) See §§ 38 and 76–78, and *ante*, pp. 1040 *et seq.*

(*f*) See *ante*, p. 844.

(*g*) Compare § 16. See *ante*, pp. 753, and 1027, 1028.

(*h*) See, also, § 105; and as to putting them on the list, see § 99, and *ante*, p. 1108.

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represent such bankrupt for all the purposes of the winding up, and shall be deemed to be contributories accordingly, and may be called upon to admit to proof against the estate of such bankrupt, or otherwise to allow to be paid out of his assets in due course of law, any monies due from such bankrupt in respect of his liability to contribute to the assets of the company being wound up (*i*); and for the purposes of this section any person who may have taken the benefit of any Act for the relief of insolvent debtors (*j*) before the eleventh day of October one thousand eight hundred and sixty-one shall be deemed to have become bankrupt.

Contributories in case of marriage.

78. If any female contributory marries, either before or after she has been placed on the list of contributories, her husband shall during the continuance of the marriage be liable to contribute to the assets of the company the same sum as she would have been liable to contribute if she had not married; and he shall be deemed to be a contributory accordingly (*k*).

Winding up by Court.

Circumstances under which company may be wound up by Court. [20 Vict. c. 47, § 67.]

79. A company under this Act (*l*) may be wound up by the Court as hereinafter defined, under the following circumstances (*m*): (that is to say,)

(1.) Whenever the company has passed a special resolution requiring the company to be wound up by the Court:

(2.) Whenever the company does not commence its business within a year from its incorporation (*n*), or suspends its business for the space of a whole year:

(3.) Whenever the members are reduced in number to less than seven (*o*):

(4.) Whenever the company is unable to pay its debts:

(5.) Whenever the Court is of opinion that it is just and equitable that the company should be wound up (*p*).

Company when to be deemed unable to pay its debts. [20 Vict. c. 47, § 68.]

80. A company under this Act (*q*) shall be deemed to be unable to pay its debts,

(1.) Whenever a creditor by assignment or otherwise, to whom the company is indebted, at law or in equity, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at their registered office, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the reasonable satisfaction of the creditor:

(*i*) See § 75 and *ante*, p. 753, and as to putting bankrupts, &c., on the list, p. 1112.

(*j*) Viz., 1 & 2 Vict. c. 110; 5 & 6 Vict. c. 116; 7 & 8 Vict. c. 96, all repealed by 24 & 25 Vict. c. 134.

(*k*) *Ante*, pp. 59 and 1105.

(*l*) *Ante*, p. 834. See § 199 (3), as to unregistered companies.

(*m*) See, too, Comp. (Winding-up) Act, 1890, § 14, and Comp. Act, 1900, § 12 (8).

(*n*) See as to when companies are entitled to commence business, Comp. Act, 1900, § 6.

(*o*) See § 48. An unregistered company cannot be wound up unless it consists of more than seven members, see § 199.

(*p*) See as to the circumstances under which a company will be ordered to be wound up, pp. 848 *et seq.*, and as to just and equitable, p. 851 *et seq.*

(*q*) See as to unregistered companies, § 199 (4).

(2.) Whenever, in England and Ireland, execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor, at law or in equity, in any proceeding instituted by such creditor against the company, is returned unsatisfied in whole or in part:

(3.) Whenever, in Scotland, the induciæ of a charge for payment on an extract decree, or an extract registered bond, or an extract registered protest, have expired without payment being made:

(4.) Whenever it is proved to the satisfaction of the Court that the company is unable to pay its debts (*r*).

Definition of "the Court."

81. The expression "the Court," as used in this part of this Act, shall mean the following authorities; (that is to say,) (*s*)

[20 Vict. c. 47, §§ 60 and 74, and 20 & 21 Vict. c. 78, § 12.]

In the case of a company engaged in (*t*) *working any mine within and subject to the jurisdiction of the Stannaries,—the Court of the vice-warden of the Stannaries, unless the vice-warden certifies that in his opinion the company would be more advantageously wound up in the High Court of Chancery, in which case "the Court" shall mean the High Court of Chancery:*

In the case of a company registered in England that is not engaged in working any such mine as aforesaid,—the High Court of Chancery:

In the case of a company registered in Ireland, the Court of Chancery in Ireland:

In all cases of companies registered in Scotland, the Court of Session in either division thereof (*u*).

Provided that where the Court of Chancery in *England or* Ireland makes an order for winding up a company under this Act, it may, if it thinks fit, direct all subsequent proceedings for winding up the same to be had in the Court of Bankruptcy having jurisdiction in the place in which the registered office of the company is situate; and thereupon such last-mentioned Court of Bankruptcy shall, for the purpose of winding up the company, be deemed to be "the Court" within the meaning of the Act, and shall have for the purpose of such winding up all the powers *of the High Court of Chancery, or* the Court of Chancery in Ireland, *as the case may require.*

Application for winding up to be made by petition.

82. Any application to the Court for the winding up of a company under this Act shall be by petition (*v*); it may be presented by the company, or by any one or more creditor or creditors, contributory or

(*r*) See *ante*, pp. 851 and 856.

(*s*) The Courts which have jurisdiction in England and Wales to wind up companies are now defined by the Companies (Winding-up) Act, 1890, and the Stannaries Court (Abolition) Act, 1896. This section is repealed as to England and Wales by the former of these Acts, and as to the words in italics by the Stat. Law Revision Act, 1893. See *ante*, pp. 828 *et seq.*, and as to Industrial and Provident Societies and Benefit Building Societies, see *ante*, p. 832, and App. II., p. 1231, and III., p. 1240.

(*t*) See *Silver Valley Mines*, 18 Ch. D. 472, and 50 & 51 Vict. c. 53, § 28 (The Stannaries Act, 1887).

(*u*) *Qu.* The repeal of these words is apparently a mistake, but immaterial owing to the saving words in the Statute Law Revision Act, see Buckley, p. 250. See further as to Scotch windings up, Companies Act, 1886.

(*v*) As to the petition, see *ante*, p. 882, and Rules, 1890, rr. 33—37, and forms 12 to 17, and Rules, 1892, rr. 18—24. As to the order to wind up, see Rules, 1890, rr. 38—41, and forms 18 to 20, and Rules, 1892, r. 22.

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[20 Vict. c. 47, § 69.]

contributories of the company, or by all or any of the above parties, together or separately (*x*); and every order which may be made on any such petition shall operate in favour of all the creditors and all the contributories of the company in the same manner as if it had been made upon the joint petition of a creditor and a contributory (*y*).

Power of Court.

83. *Any judge of the High Court of Chancery may do in chambers any act which the Court is hereby authorised to do* (*z*) :

Commencement of winding up by Court.

[20 Vict. c. 47, § 64.]

84. A winding up of a company by the Court shall be deemed to commence at the time of the presentation of the petition for the winding up (*a*).

Court may grant injunction.

[20 Vict. c. 47, § 84.]

85. The Court may, at any time after the presentation of a petition for winding up a company under this Act, and before making an order for winding up the company, upon the application of the company, or of any creditor or contributory of the company, restrain further proceedings in any action, suit, or proceeding (*b*) against the company, upon such terms as the Court thinks fit (*c*); the Court may also, at any time after the presentation of such petition, and before the first appointment of liquidators, appoint provisionally an *official* (*d*) liquidator of the estate and effects of the company (*e*).

Hearing petition.

[20 Vict. c. 47, §§ 70—72.]

86. Upon hearing the petition the Court may dismiss the same with or without costs, may adjourn the hearing conditionally or unconditionally, and may make any interim order, or any other order that it deems just (*f*).

Actions and suits to be stayed.

[22 Vict. c. 60, § 6.]

87. When an order has been made for winding up a company under this Act, no suit, action, or other proceeding shall be proceeded with or commenced against the company except with the leave of the Court, and subject to such terms as the Court may impose (*g*).

Copy of order to be forwarded to registrar.

[20 Vict. c. 47, § 73.]

88. When an order has been made for winding up a company under this Act, a copy of such order shall forthwith be forwarded by the company to the registrar of joint-stock companies, who shall make a minute thereof in his books relating to the company (*gg*).

Power of Court to stay proceedings.

[20 Vict. c. 47, § 85.]

89. The Court may, at any time after an order has been made for winding up a company, upon the application by motion of any creditor or contributory of the company, and upon proof to the satisfaction of the Court that all proceedings in relation to such winding up ought to be stayed, make an order staying the same, either altogether or for a limited time, on such terms and subject to such conditions as it deems fit (*h*).

(*x*) See *ante*, p. 841, and Comp. Act, 1867, § 40, and Comp. (Winding-up) Act, 1890, § 12 (8), and § 14.

(*y*) *Ante*, p. 896.

(*z*) The words in italics were repealed by the Stat. Law Revision Act, 1893, but such repeal does not affect any established jurisdiction, see § 1. The rest of the section, which is omitted, related to the jurisdiction of the vice-warden of the Stannaries, and has also been repealed by the Stannaries Court Abolition Act, 1896, § 5.

(*a*) See *ante*, p. 897, §§ 114, 153, 163, 164.

(*b*) *E.g.*, for penalties *Briton Medical Ass. Ass.*, 32 Ch. D. 503.

(*c*) See *ante*, pp. 906 *et seq.*, and § 197; and as to unregistered companies, §§ 201 and 204, and *ante*, p. 919.

(*d*) The title "official" liquidator has been abolished as to England and Wales by the Companies (Winding-up) Act, 1890, § 4 (3).

(*e*) See now as to provisional liquidators, Comp. (Winding-up) Act, 1890, § 4, Rules, 1892, r. 22, and *ante*, p. 965.

(*f*) See § 91, and *ante*, pp. 850 *et seq.*, and as to costs, p. 889.

(*g*) *Ante*, pp. 905 *et seq.* See, also, §§ 163, 198; and as to unregistered companies, § 202, and *ante*, p. 919.

(*gg*) See also Rules, 1890, rr. 39–41, and Rules, 1890, r. 22.

(*h*) See *ante*, p. 895.

Effect of order on share capital of company limited by guarantee.

90. When an order has been made for winding up a company limited by guarantee and having a capital divided into shares (*i*), any share capital that may not have been called up shall be deemed to be assets of the company, and to be a debt (in England and Ireland of the nature of a specialty) due to the company from each member to the extent of any sums that may be unpaid on any shares held by him and payable at such time as may be appointed by the Court (*k*).

Court may have regard to wishes of creditors or contributories.

91. The Court (*l*) may, as to all matters relating to the winding up, have regard to the wishes of the creditors or contributories, as proved to it by any sufficient evidence, and may, if it thinks it expedient, direct meetings of the creditors or contributories to be summoned, held, and conducted in such manner as the Court directs, for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court: in the case of creditors, regard is to be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company (*m*).

[*Official*] *liquidators* (*n*).

Appointment of *official* liquidator.

[20 Vict. c. 47, § 88.]

92. For the purpose of conducting the proceedings in winding up a company, and assisting the Court therein, there may be appointed a person or persons to be called an *official* liquidator or *official* liquidators (*n*); and the Court having jurisdiction may appoint such person or persons, either provisionally or otherwise, as it thinks fit, to the office of *official* liquidator or *official* liquidators; in all cases, if more persons than one are appointed to the office of *official* liquidator, the Court shall declare whether any act hereby required or authorised to be done by the *official* liquidator is to be done by all or any one or more of such persons. *The Court may also determine whether any and what security is to be given by any official liquidator on his appointment* (*nn*); if no *official* liquidator is appointed, or during any vacancy in such appointment, all the property of the company shall be deemed to be in the custody of the Court.

Resignations, removals, filling up of vacancies, and compensation.

[20 Vict. c. 47, § 92.]

93. Any *official* liquidator may resign or be removed by the Court on due cause shown (*o*); and any vacancy in the office of an *official* liquidator appointed by the Court shall be filled by the Court (*p*); there shall be paid to the official liquidator such salary or remuneration, by way of percentage

(*i*) See, too, Comp. Act, 1900, § 27.

(*k*) See, also, §§ 75 and 134.

(*l*) This power may be exercised by the liquidator, see Comp. (Winding-up) Act, 1890, § 13, Rules, 1890, rr. 47 *et seq.*, Rules, 1892, r. 25, and *ante*, pp. 850 and 981.

(*m*) See, also, § 149, and Comp. (Winding-up) Act, 1890, §§ 6 and 23, and the rules in 1st schedule thereto, and those referred to in note (*l*) and Rules of 1862, rr. 45–47.

(*n*) See Companies Winding-up Act, 1890, §§ 4 and 6, and *ante*, p. 967. In England and Wales the style now is "liquidator," not "official liquidator," ib. § 4 (3). When the Official Receiver is liquidator, he is styled "Official Receiver and liquidator," Rules, 1890, r. 66.

(*nn*) These words were repealed as to England and Wales by Comp. (Winding-up) Act, 1890, § 33. See, now, *ib.* § 4 (3), and Rules, 1890, rr. 67, 68.

(*o*) See, too, § 141, and Rules, 1890, r. 68, and as to his removal by the Board of Trade, Comp. (Winding-up) Act, 1890, §§ 11 (4), 22 (4), and 25, and *ante*, p. 970.

(*p*) See, now, Companies (Winding-up) Act, 1890, § 4 (4), Rules, 1890, r. 65, and *ante*, p. 969 See, too, §§ 141 and 150.

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or otherwise, as the Court may direct (*q*); and if more liquidators than one are appointed such remuneration shall be distributed amongst them in such proportions as the Court directs.

Style and duties of *official* liquidator. [20 Vict. c. 47, § 89.]

94. The *official* liquidator or liquidators shall be described by the style of the *official* liquidator or *official* liquidators of the particular company in respect of which he is or they are appointed, and not by his or their individual name or names (*r*): he or they shall take into his or their custody, or under his or their control, all the property, effects, and things in actions to which the company is or appears to be entitled, and shall perform such duties in reference to the winding up of the company as may be imposed by the Court (*s*).

Powers of *official* liquidator. [20 Vict. c. 47, § 90.]

95. The *official* liquidator shall have power, with the sanction of the Court (*t*), to do the following things (*u*):

(1.) To bring or defend any action, suit, or prosecution, or other legal proceeding, civil or criminal, in the name and on behalf of the company (*x*):

(2.) To carry on the business of the company, so far as may be necessary for the beneficial winding up of the same:

(3.) To sell the real and personal and heritable and movable property, effects, and things in action (*y*) of the company by public auction or private contract, with power to transfer the whole thereof to any person or company, or to sell the same in parcels (*z*).

(4.) To do all acts and to execute, in the name and on behalf of the company, all deeds, receipts, and other documents, and for that purpose to use, when necessary, the company's seal:

(5.) To prove, rank, claim, and draw a dividend, in the matter of the bankruptcy or insolvency or sequestration of any contributory, for any balance against the estate of such contributory, and to take and receive dividends in respect of such balance, in the matter of bankruptcy or insolvency, or sequestration, as a separate debt due from such bankrupt or insolvent, and rateably with the other separate creditors:

[12 & 13 Vict. c. 108, § 8.]

(6.) To draw, accept, make, and indorse any bill of exchange or promissory note in the name and on behalf of the company, also to raise upon the security of the assets of the company from time to time any requisite sum or sums of money; and the drawing, accepting, making, or indorsing of every such bill of exchange or promissory note as aforesaid on behalf of the company shall have the same effect with respect to the liability of such company as if such bill or note had been drawn, accepted, made, or indorsed by or on behalf of such company in the course of carrying on the business thereof:

(*q*) See, too, Comp. (Winding-up) Act, 1890, § 11 (4), Sched. 1, r. 18, Rules, 1890, rr. 154, 155; and *ante*, p. 971.

(*r*) See note (*n*) and *ante*, pp. 977 *et seq.*

(*s*) See § 203 as to unregistered companies, and *ante*, pp. 977, 978.

(*t*) Or with the sanction of the committee of inspection, or in some cases without the sanction either of the Court or of the committee, see Comp. (Winding-up) Act, 1890, § 12; see, too, ib. § 13.

(*u*) See *ante*, pp. 978 *et seq.*

(*x*) See § 203 as to unregistered companies.

(*y*) Including claims against the directors for misfeasance, see *Park Gate Waggon Co.*, 17 Ch. D. 234, and *Wood* v. *Woodhouse, &c., United*, W. N. 1896, p. 4.

(*z*) See *ante*, pp. 980, 990.

(7.) To take out, if necessary, in his official name, letters of administration to any deceased contributory, and to do in his official name any other act that may be necessary for obtaining payment of any monies due from a contributory or from his estate and which act cannot be conveniently done in the name of the company; and in all cases where he takes out letters of administration, or otherwise uses his official name for obtaining payment of any monies due from a contributory, such monies shall, for the purpose of enabling him to take out such letters or recover such monies, be deemed to be due to the *official* liquidator himself:

(8.) To do and execute all such other things as may be necessary for winding-up the affairs of the company and distributing its assets (*a*).

Discretion of *official* liquidator. [22 Vict. c. 60, § 9]

96. The Court may provide by any order that the *official* liquidator may exercise any of the above powers without the sanction or intervention of the Court, and where an *official* liquidator is provisionally appointed may limit and restrict his powers by the order appointing him (*aa*).

Appointment of solicitor to *official* liquidator. [20 Vict. c. 47, § 91.]

97. *The official liquidator may, with the sanction of the Court, appoint a solicitor or law agent to assist him in the performance of his duties* (*b*).

Ordinary powers of Court (*c*).

Collection and application of assets. [20 Vict. c. 47, § 75.]

98. As soon as may be after making an order for winding up the company, the Court shall settle a list of contributories (*d*), with power to rectify the register of members in all cases where such rectification is required in pursuance of this Act (*e*), and shall cause the assets of the company to be collected and applied in discharge of its liabilities (*f*).

Provision as to representative contributories.

99. In settling the list of contributories the Court shall distinguish between persons who are contributories in their own right and persons who are contributories as being representatives of or being liable to the debts of others; it shall not be necessary, where the personal representative of any deceased contributory is placed on the list, to add the heirs or devisees of such contributory; nevertheless such heirs or devisees may be added as and when the Court thinks fit (*g*).

Power of Court to require delivery of property to *official* liquidator. [11 & 12 Vict. c. 45, § 66.]

100. The Court may, at any time after making an order for winding up a company, require any contributory for the time being settled on the list of contributories, trustee, receiver, banker, or agent, or officer of the company, to pay, deliver, convey, surrender, or transfer forthwith, or within such time as the Court directs, to or into the hands of the *official* liquidator, any sum or balance, books, papers, estate or effects which happen to be in his hands for the time being, and to which the company in *primâ facie* entitled (*h*).

(*a*) See, further, §§ 159–162.

(*aa*) See *ante*, pp. 978, note (*x*), and 1179.

(*b*) Repealed as to England and Wales by the Companies (Winding-up) Act, 1890. See now § 12 (4) of that Act.

(*c*) See *ante*, pp. 920 *et seq.*

(*d*) This power may be exercised by the liquidator, see Comp. (Winding-up) Act, 1890, § 13, and Rules, 1890, 83–88. See *ante*, pp. 1034 *et seq.*

(*e*) See § 35, and *ante*, pp. 165 *et seq.* This power may be, but has not been conferred on the liquidator, see Comp. Winding-up Act, 1890, § 13, and *ante*, p. 1034.

(*f*) Now exerciseable by the liquidator under Comp. (Winding-up) Act, 1890, § 13, and Rules, 1890, rr. 89, 90.

(*g*) Exerciseable by the liquidator, Comp. (Winding-up) Act, 1890, § 13, and Rules, 1890, r. 83, and Form 45. See, too, § 76, and *ante*, p. 1110.

(*h*) See, too, §§ 103 and 115, and

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Power of Court to order payment of debts by contributory.
[11 & 12 Vict. c. 45, § 66; 21 & 22 Vict. c. 60, § 17.]

101. The Court may, at any time after making an order for winding up the company, make an order on any contributory for the time being settled on the list of contributories, directing payment to be made, in manner in the said order mentioned, of any monies due from him or from the estate of the person whom he represents to the company, exclusive of any monies which he or the estate of the person whom he represents may be liable to contribute by virtue of any call made or to be made by the Court in pursuance of this part of this Act (*i*); and it may, in making such order, when the company is not limited, allow to such contributory by way of set-off any monies due to him or the estate which he represents from the company on any independent dealing or contract with the company, but not any monies due to him as a member of the company in respect of any dividend or profit (*k*):

Provided that when all the creditors of any company, whether limited or unlimited, are paid in full, any monies due on any account whatever to any contributory from the company may be allowed to him by way of set-off against any subsequent call or calls (*l*).

Power of Court to make calls.
[20 Vict. c. 47, § 82.]

102. The Court (*m*) may, at any time after making an order for winding up a company, and either before or after it has ascertained the sufficiency of the assets of the company, make calls on and order payment thereof by all or any of the contributories for the time being settled on the list of contributories, to the extent of their liability, for payment of all or any sums it deems necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and it may, in making a call, take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same (*n*).

Power of Court to order payment into bank.
[20 Vict. c. 47, § 83.]

103. The Court may order any contributory, purchaser, or other person from whom money is due to the company to pay the same into the Bank of England or any branch thereof to the account of the *official* liquidator instead of to the *official* liquidator; and such order may be enforced in the same manner as if it had directed payment to the *official* liquidator (*o*).

Regulation of account with Court.

104. All monies, bills, notes, and other securities paid and delivered into the Bank of England or any branch thereof in the event of a company being wound up by the Court, shall be subject to such order and regulation for the keeping of the account of such monies and other effects, and for the payment and delivery in or investment and payment and delivery out of the same, as the Court may direct (*p*).

Proceedings in case of representative contributory not

105. If any person made a contributory as personal representative of a deceased contributory makes default in paying any sum ordered to be paid

Companies (Winding-up) Act, 1890, §§ 8 and 10. This power is exercise-able by the liquidator, Comp. (Winding-up) Act, 1890, § 13, and Rules, 1890, r. 91, and form 53, and *ante*, pp. 939 and 981.

(*i*) Rules, 1890, r. 95, and forms 63 to 65.

(*k*) See as to directors with unlimited liability, Comp. Act, 1867, § 6, and as to their fees, *ante*, p. 1022.

(*l*) See, further, as to set-off, § 38, cl. 7, and Comp. Act, 1867, § 6, and *ante*, pp. 1030 *et seq*, and 1158.

(*m*) This power is exerciseable by the liquidator, see Comp. (Winding-up) Act, 1890, § 13, and Rules, 1890, rr. 92–95.

(*n*) See, further, as to calls, *ante*, pp. 1144 *et seq*.

(*o*) See *ante*, p. 939.

(*p*) See as to the Companies Liquidation Account, Companies (Winding-up) Act, 1890, §§ 11, 15–18, and Rules, 1890, r. 133.

by him, proceedings may be taken for administering the personal and real estates of such deceased contributory, or either of such estates, and of compelling payment thereout of the monies due (*q*).

paying monies ordered.

106. Any order made by the Court in pursuance of this Act upon any contributory shall, subject to the provisions herein contained for appealing against such order (§ 124), be conclusive evidence that the monies, if any, thereby appearing to be due or ordered to be paid are due; and all other pertinent matters stated in such order are to be taken to be truly stated as against all persons, and in all proceedings whatsoever, with the exception of proceedings taken against the real estate of any deceased contributory, in which case such order shall only be *primâ facie* evidence for the purpose of charging his real estate, unless his heirs or devisees were on the list of contributories at the time of the order being made.

Order conclusive evidence.

[11 & 12 Vict. c. 45, § 89.]

107. The Court may fix a certain day or certain days on or within which creditors of the company are to prove their debts or claims, or to be excluded from the benefit of any distribution made before such debts are proved (*r*).

Court may fix a time for creditors to prove.

[20 Vict. c. 47, § 84.]

108. *This section related to the powers of the Court of the vice-warden of the Stannaries in connection with the proof of debts and claims. It was repealed by the Stannaries Court Abolition Act,* 1896.

109. The Court shall adjust the rights of the contributories amongst themselves, and distribute any surplus that may remain amongst the parties entitled thereto (*s*).

Court to adjust rights of contributories.

[20 Vict. c. 47, § 86.]

110. The Court may, in the event of the assets being insufficient to satisfy the liabilities, make an order as to the payment out of the estate of the company of the costs, charges, and expenses incurred in winding up any company in such order of priority as the Court thinks just (*t*).

Court to order costs.

[20 Vict. c. 47, § 87.]

111. When the affairs of the company have been completely wound up, the Court shall make an order that the company be dissolved from the date of such order, and the company shall be dissolved accordingly (*u*).

Dissolution of company.

[20 Vict. c. 47, § 93.]

112. Any order so made shall be reported by the *official* liquidator to the registrar, who shall make a minute accordingly in his books of the dissolution of such company.

Registrar to make minute of dissolution of company.

113. If the *official* liquidator makes default in reporting to the registrar, in the case of a company being wound up by the Court, the order that the company be dissolved, he shall be liable to a penalty not exceeding five pounds for every day during which he is so in default (*v*).

[20 Vict. c. 47, § 94.]

Penalty on not reporting dissolution of company.

114. *This section constituted a petition for winding up a company by the Court a* lis pendens *within* 2 *&* 3 *Vict. c.* 11, *if registered in manner required by that Act concerning suits in equity. The section was repealed by* 30 *&* 31 *Vict. c.* 47.

[21 Vict. c. 14, § 20.]

Petition to be *lis pendens.*

[11 & 12 Vict. c. 45, § 125.]

(*q*) See § 76.

(*r*) This power may be conferred on the liquidator, but *semble*, it has not been so conferred. See Comp. (Winding-up) Act, 1890, § 13. As to proof of debts, see Rules, 1890, rr. 96 *et seq.*, and *ante*, pp. 991 *et seq.*

(*s*) See *ante*, pp. 1170 *et seq.* Compare § 133 (10), though the words are different the meaning is the same. See *Bridgewater Navigation Co.*, 39 Ch. D. p. 21; and same case *sub nom.*: *Birch* v. *Cropper*, 14 App. Ca. p. 544.

(*t*) See, as to costs of winding up, Rules, 1890, r. 31, *ante*, pp. 1166 *et seq.* Compare § 144.

(*u*) See *ante*, p. 1176, and Comp. Act, 1900, § 26.

(*v*) As to the recovery of penalties, see § 65.

Extraordinary powers of Court (x).

Power of Court to summon before it persons suspected of having property of company, &c. [20 Vict. c. 47, § 77.]

115. The Court may, after it has made an order for winding up the company, summon (y) before it any officer of the company or person known or suspected to have in his possession any of the estate or effects of the company, or supposed to be indebted to the company, or any person whom the Court may deem capable of giving information concerning the trade, dealings, estate, or effects of the company; and the Court may require any such officer or person to produce any books, papers, deeds, writings, or other documents in his custody or power relating to the company; and if any person so summoned, after being tendered a reasonable sum for his expenses, refuses to come before the Court at the time appointed, having no lawful impediment (made known to the Court at the time of its sitting, and allowed by it), the Court may cause such person to be apprehended, and brought before the Court for examination; nevertheless in cases where any person claims any lien on papers, deeds, or writings or documents produced by him, such production shall be without prejudice to such lien, and the Court shall have jurisdiction in the winding up to determine all questions relating to such lien.

Special provisions as to Court of vice-warden of the Stannaries.

116. *This section contained special provisions as to the Court of the vice-warden of the Stannaries. It was repealed by the Stannaries Court Abolition Act*, 1896.

Examination of parties by Court. [20 Vict. c. 47, § 78.]

117. The Court may examine upon oath, either by word of mouth or upon written interrogatories, any person appearing or brought before them in manner aforesaid concerning the affairs, dealings, estate, or effects of the company, and may reduce into writing the answers of every such person, and require him to subscribe the same (z).

Power to arrest contributory about to abscond, or to remove or conceal any of his property. [21 Vict. c. 14, § 11.]

118. The Court may, at any time before or after it has made an order for winding up a company, upon proof being given that there is probable cause for believing that any contributory (a) to such company is about to quit the United Kingdom, or otherwise abscond, or to remove or conceal any of his goods or chattels, for the purpose of evading payment of calls, or for avoiding examination in respect of the affairs of the company, cause such contributory to be arrested, and his books, papers, monies, securities for monies, goods, and chattels to be seized, and him and them to be safely kept until such time as the Court may order (b).

Powers of Court cumulative.

119. Any powers by this Act conferred on the Court shall be deemed to be in addition to and not in restriction of any other powers subsisting either at law or in equity, of instituting proceedings against any contributory, or the estate of any contributory, or against any debtor of the company for the recovery of any call or other sums due from such contributory, or debtor, or his estate; and such proceedings may be instituted accordingly.

(x) See, also, §§ 117, 127, 165—168, and the Companies (Winding-up) Act, 1890, §§ 8, 10, and 15, and *ante*, pp. 927 *et seq.*

(y) See Rules, 1890, r. 20 (e), form 42, and Rules, 1892, r. 3 (2), and Rules, November, 1895. Compare § 8 of the Companies Winding-up Act, 1890, and see *ante*, pp. 933 *et seq.*

(z) See *ante*, pp. 936 *et seq.*

(a) Or alleged contributory. See § 74.

(b) See *ante*, p. 938, and Rules, 1890, r. 20 (e).

Enforcement of and appeal from orders.

Power to enforce orders. [20 Vict. c. 47, § 60.]

120. All orders made by the Court of Chancery in England or Ireland under this Act may be enforced in the same manner in which orders of such Court of Chancery made in any suit pending therein may be enforced; and for the purposes of this part of this Act the Court of the vice-warden of the Stannaries (*c*) shall, in addition to its ordinary powers, have the same power of enforcing any orders made by it as the Court of Chancery in England has in relation to matters within the jurisdiction of such Court; and for the last-mentioned purposes the jurisdiction of the vice-warden of the Stannaries shall be deemed to be co-extensive in local limits with the jurisdiction of the Court of Chancery in England (*d*).

Power to order contributories in Scotland to pay calls. [22 Vict. c. 60, § 5.]

121. Where an order, interlocutor, or decree has been made in Scotland for winding up a company by the Court, it shall be competent to the Court in Scotland during session, and to the lord ordinary on the bills during vacation, on production by the liquidators of a list certified by them of the names of the contributories liable in payment of any calls which they may wish to enforce, and of the amount due by each contributory respectively, and of the date when the same became due, to pronounce forthwith a decree against such contributories for payment of the sums so certified to be due by each of them respectively, with interest from the said date till payment, at the rate of five pounds per centum per annum, in the same way and to the same effect as if they had severally consented to registration for execution, on a charge of six days, of a legal obligation to pay such calls and interest; and such decree may be extracted immediately, and no suspension thereof shall be competent, except on caution or consignation, unless with special leave of the Court or lord ordinary.

Order made in England to be enforced in Scotland and Ireland (*e*). [22 Vict. c. 60, § 12.]

122. Any order made by the Court in England for or in the course of the winding up of a company under this Act shall be enforced in Scotland and Ireland in the Courts that would respectively have had jurisdiction in respect of such company if the registered office of the company had been situate in Scotland or Ireland, and in the same manner in all respects as if such order had been made by the Courts that are hereby required to enforce the same; and in like manner orders, interlocutors, and decrees, made by the Court in Scotland (*f*) for or in the course of the winding up of a company, shall be enforced in England and Ireland, and orders made by the Court in Ireland for or in the course of winding up a company shall be enforced in England and Scotland by the Courts which would respectively have had jurisdiction in the matter of such company if the registered office of the company were situate in the division of the United Kingdom where the order is required to be enforced, and in the same manner in all respects as if such order had been made by the Court required to enforce the same in the case of a company within its own jurisdiction.

(*c*) The jurisdiction of the vice-warden's Court is now vested in the County Court of Cornwall, see Stannaries Court Abolition Act, 1896, and the order of the Lord Chancellor thereunder, printed *infra*. See, too, Companies (Winding-up) Act, 1890, § 1 (6).

(*d*) See Rules, 1890, rr. 20 (a) *et seq.*, and *ante*, pp. 948 *et seq.*

(*e*) See *International Pulp and Paper Co.*, 3 Ch. D. 594, and *Fontaine's case*, 41 Ch. D. 118.

(*f*) See *City of Glasgow Bank*, 14 Ch. D. 628.

Mode of dealing with orders to be enforced by other Courts. [22 Vict. c. 60, § 13.]

123. Where any order, interlocutor, or decree made by one Court is required to be enforced by another Court, as hereinbefore provided, an office copy of the order, interlocutor, or decree so made shall be produced to the proper officer of the Court required to enforce the same, and the production of such office copy shall be sufficient evidence of such order, interlocutor, or decree having been made; and thereupon such last-mentioned Court shall take such steps in the matter as may be requisite for enforcing such order, interlocutor, or decree in the same manner as if it were the order, interlocutor, or decree of the Court enforcing the same.

Appeals from orders. [11 & 12 Vict. c. 45, §§ 101, 102, 12 & 13 Vict. c. 108, § 33.]

124. Rehearings of (*g*) and appeals from any order or decision made or given in the matter of the winding up of a company by any Court having jurisdiction under this Act, may be had in the same manner and subject to the same conditions in and subject to which appeals may be had from any order or decision of the same Court in cases within its ordinary jurisdiction; subject to this restriction, that no such rehearing or appeal shall be heard unless notice of the same is given within three weeks after any order complained of has been made in manner in which notices of appeal are ordinarily given according to the practice of the Court appealed from, unless such time is extended by the Court of Appeal (*h*).

Judicial notice to be taken of signature of officers, &c. [11 & 12 Vict c. 45, § 111.]

125. In all proceedings under this part of this Act, all Courts, judges, and persons judicially acting, and all other officers, judicial or ministerial, of any Court, or employed in enforcing the process of any Court, shall take judicial notice of the signature of any officer of the Courts of Chancery or Bankruptcy in England or in Ireland, or of the Court of Session in Scotland, or of the registrar of the Court of the vice-warden of the Stannaries (*i*), and also of the official seal or stamp of the several offices of the Courts of Chancery or Bankruptcy in England or Ireland, or of the Court of Session in Scotland, or of the Court of the vice-warden of the Stannaries, when such seal or stamp is appended to or impressed on any document made, issued, or signed under the provisions of this part of the Act, or any official copy thereof (*ii*).

Special commissioners for taking evidence. [20 Vict. c. 47, § 101.]

126. *The commissioners of the Court of Bankruptcy and* (*j*) the judges of the County Courts in England who sit at places more than twenty miles from the General Post Office, and the commissioners of bankrupt and the assistant barristers and recorders in Ireland, and the sheriffs of counties in Scotland, shall be commissioners for the purpose of taking evidence under this Act in cases where any company is wound up in any part of the United Kingdom (*k*), and it shall be lawful for the Court to refer the whole or any part of the examination of any witnesses under this Act to any person hereby appointed commissioner, although such commissioner is out of the jurisdiction of the Court that made the order or

(*g*) As to rehearings, see *ante*, p. 950.

(*h*) As to the time for appeal, see now R. S. C., Order lviii., rr. 9 and 15; and *ante*, pp. 894, 949 *et seq.*, 995, and 1038. The proviso at the end of this section relating to the remission by the Lord Warden of the Stannaries of any appeal against an order of the vice-warden made in the matter of a winding up to the Court of Appeal in Chancery was repealed by the Stannaries Court Abolition Act, 1896.

(*i*) See, now, the Stannaries Court Abolition Act, 1896, and the Lord Chancellor's order under that Act, printed *infra*.

(*ii*) See, too, Rules, 1892, r. 7.

(*j*) These words were repealed by the Statute Law Revision Act, 1875.

(*k*) See, too, Companies (Winding-up) Act, 1890, § 8 (9).

decree for winding up the company; and every such commissioner shall, in addition to any power of summoning and examining witnesses, and requiring the production or delivery of documents, and certifying or punishing defaults by witnesses, which he might lawfully exercise as a *commissioner of the Court of Bankruptcy* (*l*), judge of a County Court, commissioner of bankrupt, assistant barrister, or recorder, or as a sheriff of a county, have in the matter so referred to him all the same powers of summoning and examining witnesses, and requiring the production or delivery of documents, and punishing defaults by witnesses, and allowing costs and charges and expenses to witnesses, as the Court which made the order for winding up the company has; and the examination so taken shall be returned or reported to such last-mentioned Court in such manner as it directs.

Court may order the examination of persons in Scotland. [12 & 13 Vict. c. 108, § 21.]

127. The Court may direct the examination in Scotland of any person for the time being in Scotland, whether a contributory of the company or not, in regard to the estate, dealings, or affairs of any company in the course of being wound up, or in regard to the estate, dealings, or affairs of any person being a contributory of the company, so far as the company may be interested therein by reason of his being such contributory; and the order or commission to take such examination shall be directed to the sheriff of the county in which the person to be examined is residing or happens to be for the time; and the sheriff shall summon such person to appear before him at a time and place to be specified in the summons for examination upon oath as a witness or as a haver, and to produce any books, papers, deeds, or documents called for which may be in his possession or power; and the sheriff may take such examination either orally or upon written interrogatories and shall report the same in writing in the usual form to the Court and shall transmit with such report the books, papers, deeds, or documents produced, if the originals thereof are required and specified by the order, or otherwise such copies thereof or extracts therefrom, authenticated by the sheriff, as may be necessary; and in case any person so summoned fails to appear at the time and place specified, or appearing refuses to be examined, or to make the production required, the sheriff shall proceed against such person as a witness or haver duly cited, and failing to appear or refusing to give evidence or make production may be proceeded against by the law of Scotland: and the sheriff shall be entitled to such and the like fees, and the witness shall be entitled to such and the like allowances as sheriffs when acting as commissioners under appointment from the Court of Session, and as witnesses and havers are entitled to in the like cases according to the law and practice of Scotland; if any objection is stated to the sheriff by the witness, either on the ground of his incompetency as a witness, or as to the production required to be made, or on any other ground whatever, the sheriff may, if he thinks fit, report such objection to the Court, and suspend the examination of such witness until such objection has been disposed of by the Court.

Affidavits may be sworn, &c., before any competent Court or person. [12 & 13 Vict. c. 108, § 24.]

128. Any affidavit, affirmation, or declaration required to be sworn or made, under the provisions or for the purposes of this part of this Act, may be lawfully sworn or made in Great Britain or Ireland, or in any colony, island, plantation, or place under the dominion of her Majesty in foreign parts, before any Court, judge, or person lawfully authorised to take and receive affidavits, affirmations, or declarations, or before any of her Majesty's consuls or vice-consuls, in any foreign parts out of her

(*l*) See note (*j*), p. 1290.

APPENDIX VI.

Majesty's dominions (*ll*); and all Courts, judges, justices, commissioners, and persons acting judicially shall take judicial notice of the seal or stamp or signature (as the case may be) of any such Court, judge, person, consul, or vice-consul attached, appended, or subscribed to any such affidavit, affirmation, or declaration, or to any other document to be used for the purposes of this part of this Act.

Voluntary winding up of company (*m*).

Circumstances under which company may be wound up voluntarily. [20 Vict. c. 47, § 102.]

129. A company under this Act may be wound up voluntarily,

(1.) Whenever the period, if any, fixed for the duration of the company by the articles of association expires, or whenever the event, if any occurs, upon the occurrence of which it is provided by the articles of association that the company is to be dissolved, and the company in general meeting has passed a resolution requiring the company to be wound up voluntarily:

(2.) Whenever the company has passed a special resolution requiring the company to be wound up voluntarily (*n*):

(3.) Whenever the company has passed an extraordinary resolution to the effect that it has been proved to their satisfaction that the company cannot, by reason of its liabilities, continue its business, and that it is advisable to wind up the same (*o*):

For the purposes of this Act, any resolution shall be deemed to be extraordinary which is passed in such manner as would, if it had been confirmed by a subsequent meeting, have constituted a special resolution, as hereinbefore defined (*p*).

Commencement of voluntary winding up. [20 Vict. c. 47, § 64.]

130. A voluntary winding up shall be deemed to commence at the time of the passing of the resolution authorising such winding up (*q*).

Effect of voluntary winding up on status of company. [20 Vict. c. 47, § 104.]

131. Whenever a company is wound up voluntarily, the company shall, from the date of the commencement of such winding up, cease to carry on its business, except in so far as may be required for the beneficial winding up thereof, and all transfers of shares, except transfers made to or with the sanction of the liquidators, or alteration in the status of the members of the company taking place after the commencement of such winding up, shall be void (*r*), but its corporate state and all its corporate powers shall, notwithstanding it is otherwise provided by its regulations, continue until the affairs of the company are wound up (*s*).

Notice of resolution to wind up voluntarily. [20 Vict. c. 47, § 103.]

132. Notice of any special resolution (*t*) or extraordinary resolution passed for winding up a company voluntarily shall be given by advertisement as respects companies registered in England in the "London Gazette," as respects companies registered in Scotland in the "Edinburgh Gazette," and as respects companies registered in Ireland in the "Dublin Gazette."

Consequences of voluntary winding up. [20 Vict. c. 47, § 104.]

133. The following consequences shall ensue upon the voluntary winding up of a company:

(1.) The property of the company shall be applied in satisfaction of

(*ll*) As to affidavits proving debts, see Rule 3rd Dec., 1892.

(*m*) See § 199 (2) and *ante*, pp. 1178 *et seq.*

(*n*) See §§ 51, 53, and 132.

(*o*) See *ante*, p. 1181, and as to advertisement of the resolution, § 132.

(*p*) See § 51.

(*q*) See *ante*, pp. 897, 1182.

(*r*) See § 153, and *ante*, pp. 889, 907. and as to transfers, pp. 1130 and 1134, 1135.

(*s*) See §§ 142, 143, and *ante*, pp. 1183 and 1192.

(*t*) See, too, § 53.

its liabilities *pari passu* (*u*), and, subject thereto, shall, unless it be otherwise provided by the regulations of the company, be distributed amongst the members, according to their rights and interests in the company:

(2.) Liquidators shall be appointed for the purpose of winding up the affairs of the company and distributing the property:

(3.) The company in general meeting shall appoint such persons or person as it thinks fit to be liquidators or a liquidator, and may fix the remuneration to be paid to them or him (*x*):

(4.) If one person only is appointed, all the provisions herein contained in reference to several liquidators shall apply to him:

(5.) Upon the appointment of liquidators, all the power of the directors shall cease, except in so far as the company in general meeting or the liquidators may sanction the continuance of such powers (*y*):

(6.) When several liquidators are appointed, every power hereby given may be exercised by such one or more of them, as may be determined at the time of their appointment, or in default of such determination by any number not less than two:

(7.) The liquidators may, without the sanction of the Court, exercise all powers by this Act given to the *official* liquidator (*z*):

(8.) The liquidators may exercise the powers hereinbefore given to the Court of settling the list of contributories of the company; and any list so settled shall be *primâ facie* evidence of the liability of the persons named therein to be contributories (*a*):

(9.) The liquidators may at any time after the passing of the resolution for winding up the company, and before they have ascertained the sufficiency of the assets of the company, call on all or any of the contributories for the time being settled on the list of contributories to the extent of their liability to pay all or any sums they deem necessary to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of winding it up, and for the adjustment of the rights of the contributories amongst themselves; and the liquidators may in making a call take into consideration the probability that some of the contributories upon whom the same is made may partly or wholly fail to pay their respective portions of the same (*b*):

(10.) The liquidators shall pay the debts of the company, and adjust the right of the contributories amongst themselves (*c*).

Effect of winding up on share capital of company limited by guarantee.

134. Where a company limited by guarantee, and having a capital divided into shares, is being wound up voluntarily, any share capital that may not have been called up shall be deemed to be assets of the company,

(*u*) See § 159, and *ante*, p. 1190, and as to preferential debts, see pp. 998, *et seq.*

(*x*) See §§ 135 and 140, 141, and *ante*, pp. 1183 *et seq.*

(*y*) This is so in a winding up by the Court, though there is no express provision in that case; see *Fowler* v. *Broad's Night Light Co.* [1893], 1 Ch. 724. See, too, *ante*, p. 1184.

(*z*) See §§ 95, 138, 139, 159, 160, and Companies (Winding-up) Act, 1890, §§ 12 and 13, and *ante*, pp. 978 *et seq.*

(*a*) See §§ 98, 99, and Companies (Winding-up) Act, 1890, § 13, and *ante*, pp. 1034 *et seq.*

(*b*) See, also, § 102, and *ante*, p. 1191.

(*c*) Compare § 109, where the words are different but the meaning the same. See *Bridgewater Navigation Co.*, 39 Ch. D. p. 21, and *Birch* v. *Cropper*, 14 App. Ca. p. 544.

APPENDIX VI.

Power of Court to adopt proceedings of voluntary winding up.
[21 Vict. c. 14, § 19.]

146. Where a company is in course of being wound up voluntarily, and proceedings are taken for the purpose of having the same wound up by the Court, the Court may, if it thinks fit, notwithstanding that it makes an order directing the company to be wound up by the Court, provide in such order or in any other order for the adoption of all or any of the proceedings taken in the course of the voluntary winding up (*q*).

Winding up subject to the supervision of the Court (*r*).

Power of Court to direct voluntary winding up to continue subject to supervision of Court.
[21 Vict. c. 14, § 19.]

147. When a resolution has been passed by a company to wind up voluntarily, the Court may make an order directing that the voluntary winding up should continue, but subject to such supervision of the Court, and with such liberty for creditors, contributories, or others, to apply to the Court, and generally upon such terms and subject to such conditions as the Court thinks just (*s*).

Effect of petition for continuance of winding up subject to supervision.
[22 Vict. c. 60, § 2.]

148. A petition, praying wholly or in part that a voluntary winding up should continue, but subject to the supervision of the Court, and which winding up is hereinafter referred to as a winding up subject to the supervision of the Court, shall, for the purpose of giving jurisdiction to the Court over suits and actions, be deemed to be a petition for winding up the company by the Court (*t*).

Court may have regard to wishes of creditors.
[22 Vict. c. 60, §§ 2 & 3.]

149. The Court may, in determining whether a company is to be wound up altogether by the Court, or subject to the supervision of the Court in the appointment of liquidator or liquidators, and in all other matters relating to the winding up subject to supervision, have regard to the wishes of the creditors or contributories as proved to it by any sufficient evidence, and may direct meetings of the creditors or contributories to be summoned, held, and regulated in such manner as the Court directs for the purpose of ascertaining their wishes, and may appoint a person to act as chairman of any such meeting, and to report the result of such meeting to the Court: in the case of creditors regard shall be had to the value of the debts due to each creditor, and in the case of contributories to the number of votes conferred on each contributory by the regulations of the company (*u*).

Power to Court to appoint additional liquidators in winding up subject to supervision.
[22 Vict. c. 60, § 3.]

150. Where any order is made by the Court for a winding up subject to the supervision of the Court, the Court may, in such order or in any subsequent order, appoint any additional liquidator or liquidators; and any liquidators so appointed by the Court shall have the same powers, be subject to the same obligations, and in all respects stand in the same position as if they had been appointed by the company; the Court may from time to time remove any liquidators so appointed by the Court,

(*q*) See *Taurine Co.*, 25 Ch. D. 118, p. 139, and *ante*, p. 897.

(*r*) See *ante*, pp. 1193 *et seq.*

(*s*) For form of order, see Rules, 1890, form 19, and for a special form, see *Watson and Sons, Ld.* [1891], 2 Ch. 55, and *ante*, pp. 1196, 1197. As to who may petition, and as to "or others" see *Pen y Van Colliery Co.*, 6 Ch. D. 477.

(*t*) See § 85 and § 151; and as to the petition, see Rules, 1890, rr. 33–37, and Rules, 1892, rr. 18–24, and see *ante*, pp. 882 *et seq.*, and pp. 906 *et seq.*

(*u*) See Rules, 1862, rr. 45-47, Rules, 1892, r. 17. In a compulsory winding up compare § 91 and Comp. (Winding-up) Act, 1890, §§ 6 and 23, and Rules, 1890, rr. 47 *et seq.*, and Rules, 1892, r. 25.

and fill up any vacancy occasioned by such removal, or by death or resignation (*v*).

Effect of order of Court for winding up subject to supervision. [22 Vict. c. 60, § 4.]

151. Where an order is made for winding up, subject to the supervision of the Court, the liquidators appointed to conduct such winding up may, subject to any restrictions imposed by the Court, exercise all their powers, without the sanction or intervention of the Court, in the same manner as if the company were being wound up altogether voluntarily; but, save as aforesaid, any order made by the Court for a winding up, subject to the supervision of the Court, shall for all purposes, including the staying of actions, suits, and other proceedings, be deemed to be an order of the Court for winding up the company by the Court (*x*), and shall confer full authority on the Court to make calls, or to enforce calls made by the liquidators, and to exercise all other powers which it might have exercised if an order had been made for winding up the company altogether by the Court; and in the construction of the provisions whereby the Court is empowered to direct any act or thing to be done to or in favour of the *official* liquidators (*y*), the expression *official* liquidators shall be deemed to mean the liquidators conducting the winding up subject to the supervision of the Court (*z*).

Appointment in certain cases of voluntary liquidators to be *official* liquidators. [22 Vict. c. 60, § 8.]

152. Where an order has been made for the winding up of a company subject to the supervision of the Court, and such order is afterwards superseded (*a*) by an order directing the company to be wound up compulsorily, the Court may in such last-mentioned order, or in any subsequent order, appoint the voluntary liquidators or any of them, either provisionally or permanently, and either with or without the addition of any other persons, to be *official* liquidators (*aa*).

Supplemental provisions.

Dispositions of property, &c., after the commencement of the winding up to be void. [20 Vict. c. 47, § 73.]

153. Where any company is being wound up by the Court or subject to the supervision of the Court, all dispositions of the property, effects, and things in action of the company, and every transfer of shares, or alteration in the status of the members of the company made between the commencement of the winding up (*b*) and the order for winding up, shall, unless the Court otherwise orders, be void (*c*).

The books of the company to be evidence. [20 Vict. c. 47, § 81.]

154. Where any company is being wound up, all books, accounts, and documents of the company and of the liquidators shall, as between the contributories of the company (*d*), be *primâ facie* evidence of the truth of all matters purporting to be therein recorded (*e*).

Disposal of books, accounts, and documents of the company.

155. Where any company has been wound up under this Act and is about to be dissolved, the books, accounts, and documents of the company and of the liquidators (*ee*) may be disposed of in the following way; that is

(*v*) See, also, § 141.

(*x*) But see Comp. (Winding-up) Act, 1890, § 31 (2).

(*y*) See *ante*, p. 1283, note (*n*).

(*z*) See, as to this section, *ante*, p. 1196; as to the commencement of the winding up, pp. 897 and 1197; as to staying actions, &c., p. 907; as to compromises, &c., §§ 159 and 160.

(*a*) As to how far a compulsory order supersedes a voluntary winding up, see *Thomas* v. *Patent Lionite Co.*, 17 Ch. D. 250, and *ante*, p. 898.

(*aa*) See *ante*, p. 1283, note (*n*), and pp. 1197, 1198.

(*b*) See §§ 84 and 130.

(*c*) See, also, §§ 131, 163, 164, and as to dealings with property, p. 899; as to transfers of shares, pp. 1128 *et seq.*

(*d*) And alleged contributories, see § 74.

(*e*) See *ante*, p. 974.

(*ee*) See as to the liquidators' books, *ante*, p. 974, and Rules, 1890, r. 141.

to say, where the company has been wound up by or subject to the supervision of the Court, in such way as the Court directs, and where the company has been wound up voluntarily, in such way as the company by an extraordinary resolution directs; but after the lapse of five years from the date of such dissolution, no responsibility shall rest on the company, or the liquidators, or any one to whom the custody of such books, accounts, and documents has been committed, by reason that the same, or any of them, cannot be made forthcoming to any party or parties claiming to be interested therein (*f*).

Inspection of books. [22 Vict. c. 60, § 7.]

156. Where an order has been made for winding up a company by the Court, or subject to the supervision of the Court, the Court may make such order for the inspection by the creditors and contributories of the company of its books and papers as the Court thinks just; and any books and papers in the possession of the company may be inspected by creditors or contributories, in conformity with the order of the Court, but not further or otherwise (*g*).

Power of assignee to sue and be sued.

157. Any person to whom any thing in action belonging to the company is assigned, in pursuance of this Act, may bring or defend any action or suit relating to such thing in action in his own name.

Debts and claims of all descriptions to be proved.

158. In the event of any company being wound up under this Act, all debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding only in damages, shall be admissible to proof against the company, a just estimate being made, so far as is possible, of the value of all such debts or claims, as may be subject to any contingency or sound only in damages, or for some other reason do not bear a certain value (*h*).

Power to make compromises, &c., with creditors. [22 Vict. c. 60, § 10.]

159. The liquidators may, with the sanction of the Court (*i*), where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution (*k*) of the company, where the company is being wound up altogether voluntarily, pay any classes of creditors in full, or make such compromise or other arrangement as the liquidators may deem expedient with creditors or persons claiming to be creditors, or persons having or alleging themselves to have any claim, present or future, certain or contingent, ascertained or sounding only in damages against the company, or whereby the company may be rendered liable (*l*).

Power to make compromises contributories and debtors.

160. The liquidators may, with the sanction of the Court (*m*) where the company is being wound up by the Court or subject to the supervision of the Court, and with the sanction of an extraordinary resolution (*n*) of the company where the company is being wound up altogether voluntarily,

(*f*) As to right of litigants to compel the production of these books by the liquidator, see *London and Yorkshire Bank* v. *Cooper*, 15 Q. B. D. 473.

(*g*) See *ante*, p. 975.

(*h*) See as to insolvent companies Judicature Act, 1875, § 10, and Bankruptcy Act, 1883, § 37 (3), and *ante*, pp. 1001 *et seq.*; and as to annuities and policies, Life Ass. Comp. Act, 1872, *ante*, pp. 1019, 1020.

(*i*) Or in a compulsory winding up with the sanction of the committee of inspection, see Companies (Winding-up) Act, 1890, § 12. In a winding up subject to supervision, see Rules, 1862, r. 49, and Rules, 1892, r. 17.

(*k*) See 129.

(*l*) See *ante*, pp. 984 *et seq.*, and 1187.

(*m*) Or in a compulsory winding up with the sanction of the committee of inspection, see Comp. (Winding-up) Act, 1890, § 12.

(*n*) See § 129.

[22 Vict. c. 60, § 19.]

compromise all calls and liabilities to calls, debts, and liabilities capable of resulting in debts, and all claims, whether present or future, certain or contingent, ascertained or sounding only in damages, subsisting or supposed to subsist between the company and any contributory or alleged contributory, or other debtor or person apprehending liability to the company, and all questions in any way relating to or affecting the assets of the company or the winding up of the company, upon the receipt of such sums, payable at such times, and generally upon such terms as may be agreed upon, with power for the liquidators to take any security for the discharge of such debts or liabilities, and to give complete discharges in respect of all or any such calls, debts, or liabilities (*o*).

Power for liquidators to accept shares, &c., as a consideration for sale of property to another company.

[21 Vict. c. 14, § 17.]

161. Where any company is proposed to be or is in the course of being wound up altogether voluntarily, and the whole or a portion of its business or property is proposed to be transferred or sold to another company, the liquidators of the first-mentioned company may, with the sanction of a special resolution (*p*) of the company by whom they were appointed, conferring either a general authority on the liquidators, or an authority in respect of any particular arrangement, receive in compensation or part compensation for such transfer or sale, shares, policies, or other like interests in such other company, for the purpose of distribution amongst the members of the company being wound up, or may enter into any other arrangement whereby the members of the company being wound up may, in lieu of receiving cash, shares, policies, or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the purchasing company; and any sale made or arrangement entered into by the liquidators in pursuance of this section shall be binding on the members of the company being wound up; subject to this proviso, that if any member of the company being wound up, who has not voted in favour of the special resolution passed by the company of which he is a member at either of the meetings held for passing the same, expresses his dissent from any such special resolution in writing addressed to the liquidators or one of them, and left at the registered office of the company not later than seven days after the date of the meeting at which such special resolution was passed (*q*), such dissentient member may require the liquidators to do one of the following things as the liquidators may prefer; that is to say, either to abstain from carrying such resolution into effect, or to purchase the interest held by such dissentient member at a price to be determined in manner hereinafter mentioned, such purchase-money to be paid before the company is dissolved, and to be raised by the liquidators in such manner as may be determined by special resolution; no special resolution shall be deemed invalid for the purposes of this section by reason that it is passed antecedently to or concurrently with any resolution for winding up the company, or for appointing liquidators; but if an order be made within a year for winding up the company by or subject to the supervision of the Court, such resolution shall not be of any validity unless it is sanctioned by the Court (*r*).

Mode of determining price.

162. The price to be paid for the purchase of the interest of any

(*o*) See §§ 136, 137; 33 & 34 Vict. c. 104, § 2, and Comp. Act, 1900, § 24, *ante*, pp. 984 *et seq.*, and 1187.

(*p*) See § 51.

(*q*) *Union Bank of Kingston-upon-Hull*, 13 Ch. D. 808.

(*r*) See, as to transfers of business under §§ 161 and 162, *ante*, pp. 1189, 1190, and 1203 *et seq.* The sanction must be given by or after the order to

dissentient member may be determined by agreement; but if the parties dispute about the same, such dispute shall be settled by arbitration, and for the purposes of such arbitration the provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the settlement of disputes by arbitration (*s*), shall be incorporated with this Act; and in the construction of such provisions this Act shall be deemed to be the special Act, and the "company" shall mean the company that is being wound up, and any appointment by the said incorporated provisions directed to be made under the hand of the secretary, or any two of the directors, may be made under the hand of the liquidator, if only one, or any two or more of the liquidators if more than one.

Certain attachments, &c., to be void.
[20 Vict. c. 47, § 80.]

163. Where any company is being wound up by the Court or subject to the supervision of the Court, any attachment, sequestration, distress, or execution put in force against the estate or effects of the company after the commencement of the winding up shall be void to all intents (*t*).

Fraudulent preference.
[20 Vict. c. 47, § 76.]

164. Any such conveyance, mortgage, delivery of goods, payment, execution, or other act relating to property as would, if made or done by or against any individual trader, be deemed in the event of his bankruptcy to have been made or done by way of undue or fraudulent preference of the creditors of such trader, shall, if made or done by or against any company, be deemed, in the event of such company being wound up under this Act, to have been made or done by way of undue or fraudulent preference of the creditors of such company, and shall be invalid accordingly (*u*); and for the purposes of this section the presentation of a petition for winding up a company shall in the case of a company being wound up by the Court or subject to the supervision of the Court, and a resolution for winding up the company shall in the case of a voluntary winding up, be deemed to correspond with the act of bankruptcy in the case of an individual trader: and any conveyance or assignment made by any company formed under this Act of all its estate and effects to trustees for the benefit of all its creditors shall be void to all intents.

Power of Court to adjudicate against delinquent directors and officers.

165. *Where, in the course of the winding up of any company under this Act, it appears that any past or present director, manager, official, or other liquidator, or any officer of such company, has misapplied or retained in his own hands or become liable or accountable for any monies of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application of any liquidator, or of any creditor or contributory of the company, notwithstanding that the offence is one for which the offender is criminally responsible, examine into the conduct of such director, manager, or other officer, and compel him to repay any monies so misapplied or retained, or for which he has become liable or accountable, together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust, as the Court thinks just* (*x*).

Penalty on falsification of books.

166. If any director, officer, or contributory of any company wound up

wind up the company by or under the supervision of the Court. *Callao Bis Co.*, 42 Ch. D. 169.

(*s*) 8 & 9 Vict. c. 16, §§ 128—134, and *ante*, pp. 1189 and 1206.

(*t*) See, also, §§ 84, 85, 87, 197, 198, 201, 202, and see *ante*, pp. 905 *et seq.*

(*u*) See *ante*, pp. 901, 902.

(*x*) This section has been repealed as to England and Wales by the Comp. (Winding-up) Act, 1890, § 33, and replaced by § 10 of that Act. See *ante*, pp. 940 *et seq.*

under this Act destroys, mutilates, alters, or falsifies any books, papers, writings, or securities, or makes or is privy to the making of any false or fraudulent entry in any register, book of account, or other document belonging to the company with intent to defraud or deceive any person, every person so offending shall be deemed to be guilty of a misdemeanor, and upon being convicted shall be liable to imprisonment for any term not exceeding two years, with or without hard labour (*y*).

[20 Vict. c. 47, § 79.]

Prosecution of delinquent directors, &c., in the case of winding up by Court.

167. Where any order is made for winding up a company by the Court or subject to the supervision of the Court, if it appears in the course of such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible (*z*), the Court may, on the application of any person interested in such winding up (*a*), or of its own motion, direct the *official* (*b*) liquidators, or the liquidators (as the case may be), to institute and conduct a prosecution or prosecutions for such offence, and may order the costs and expenses to be paid out of the assets of the company.

[22 Vict. c. 60, § 20.]

Prosecution of delinquent directors, &c., in case of voluntary winding up.

168. Where a company is being wound up altogether voluntarily, if it appear to the liquidators conducting such winding up that any past or present director, manager, officer, or member of such company has been guilty of any offence in relation to the company for which he is criminally responsible, it shall be lawful for the liquidators, with the previous sanction of the Court (*c*), to prosecute such offender; and all expenses properly incurred by them in such prosecution shall be payable out of the assets of the company in priority to all other liabilities.

[22 Vict. c. 60, § 21.]

Penalty on perjury.

169. If any person, upon any examination upon oath or affirmation authorised under this Act, or in any affidavit, deposition, or solemn affirmation in or about the winding up of any company under this Act, or otherwise in or about any matter arising under this Act, wilfully and corruptly gives false evidence, he shall, upon conviction, be liable to the penalties of wilful perjury.

[11 & 12 Vict. c. 45, § 113.]

Power of Courts to make rules.

Power of Lord Chancellor of Great Britain to make rules.

170. *This section authorised the Lord Chancellor to make rules concerning the mode of proceeding to be had for winding up a company in the Court of Chancery, and enacted that until such rules were made the general practice of the Court of Chancery, including the practice hitherto in use in winding up companies, should, so far as the same was applicable and not inconsistent with this Act, apply to all proceedings for winding up a company* (*d*).

[20 Vict. c. 47, § 95, and 22 Vict. c. 60, § 11.]

Power of Court of Session in Scotland to make rules.

171. In Scotland, the Court of Session may make such rules concerning the mode of winding up as may be necessary by act of sederunt; but, until such rules are made, the general practice of the Court of Session in

(*y*) See, also, Comp. Act, 1900, § 28, and 24 & 25 Vict. c. 96, § 83, *ante*, pp. 625 *et seq.*

(*z*) See 24 & 25 Vict. c. 96, §§ 82 *et seq.*, *ante*, pp. 625, 945.

(*a*) See in a compulsory winding up, Rules, 1892, rr. 4 and 5; and in a winding up under supervision, Rules, 1862, r. 51, and Rules, 1892, r. 17.

(*b*) See *ante*, p. 1283, note (*n*).

(*c*) Rules, 1862, r. 51, and Rules, 1892, r. 17, and *ante*, p. 1187.

(*d*) See Comp. Act, 1867, § 20, and *ante*, p. 922. Under the above section rules have been promulgated. See Rules, 1862, *infra*, Appendix No. VII. The section has been repealed by the Stat. Law Revision, &c., Act, 1881. See now the Comp. (Winding-up) Act, 1890, § 26.

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[20 Vict. c. 47, § 97.]

suits pending in such Court shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding up a company, and official liquidators shall in all respects be considered as possessing the same powers as any trustee on a bankrupt estate.

Power to make rules in Stannaries Court.

[20 Vict. c. 47, § 98.]

172. *This section authorised the vice-warden of the Stannaries to make rules for carrying into effect the powers conferred upon his Court by this Act. The section has been repealed by the Stannaries Court Abolition Act,* 1896 (*e*).

Power of Lord Chancellor of Ireland to make rules.

[20 Vict. c. 47, § 96.]

173. In Ireland the Lord Chancellor of Ireland may, as respects the winding up of companies in Ireland, with the advice and consent of the Master of the Rolls in Ireland, exercise the same power of making rules as is by this Act hereinbefore given to the Lord Chancellor of Great Britain; but, until such rules are made, the general practice of the Court of Chancery in Ireland, including the practice hitherto in use in Ireland in winding up companies, shall, so far as the same is applicable and not inconsistent with this Act, apply to all proceedings for winding up a company.

PART V.

REGISTRATION OFFICE.

Constitution of registration office.

[20 Vict. c. 47, § 106.]

174. The registration of companies under this Act shall be conducted as follows (that is to say):—

(1.) The Board of Trade may, from time to time, appoint such registrars, assistant registrars, clerks, and servants as they may think necessary for the registration of companies under this Act, and remove them at pleasure:

(2.) The Board of Trade may make such regulations as they think fit with respect to the duties to be performed by any such registrars, assistant registrars, clerks, and servants as aforesaid:

(3.) The Board of Trade may, from time to time, determine the places at which offices for the registration of companies are to be established, so that there be at all times maintained in each of the three parts of the United Kingdom at least one such office, and that no company shall be registered except at an office within that part of the United Kingdom in which, by the memorandum of association, the registered office of the company is declared to be established, and the board may require that the registrar's office of the Court of the vice-warden of the Stannaries shall be one of the offices for the registration of companies formed for working mines within the jurisdiction of the Court (*f*):

(*e*) See now the County Court (Stannaries Jurisdiction) Rules, 1897, incorporated as Order Lc. in the County Court Rules.

(*f*) The Board of Trade, by an order dated the 1st Dec. 1862, established a local office at Truro for the registration of companies for working mines in the Stannaries, and appointed the assistant registrar of the Stannaries Court to discharge the duties of an assistant registrar of joint-stock companies. This order has been revoked and the local office abolished. Such companies must now be registered at Somerset House, and the annual returns under

(4.) The Board of Trade may, from time to time, direct a seal or seals to be prepared for the authentication of any documents required for or connected with the registration of companies:

(5.) Every person may inspect the documents kept by the registrar of joint-stock companies; and there shall be paid for such inspection such fees as may be appointed by the Board of Trade, not exceeding one shilling for each inspection; and any person may require a certificate of the incorporation of any company, or a copy or extract of any other document or any part of any other document, to be certified by the registrar: and there shall be paid for such certificate of incorporation, certified copy, or extract such fees as the Board of Trade may appoint, not exceeding five shillings for the certificate of incorporation, and not exceeding sixpence for each folio of such copy or extract, or, in Scotland, for each sheet of two hundred words:

(6.) The existing registrar, assistant registrars, clerks, and other officers and servants in the office for the registration of joint stock companies shall, during the pleasure of the Board of Trade, hold the offices and receive the salaries hitherto held and received by them, but they shall in the execution of their duties conform to any regulations that may be issued by the Board of Trade:

(7.) There shall be paid to any registrar, assistant registrar, clerk, or servant that may hereafter be employed in the registration of oint-stock companies, such salary as the Board of Trade may, with the sanction of the commissioners of the Treasury, direct:

(8.) Whenever any act is herein directed to be done to or by the registrar of joint-stock companies, such act shall, until the Board of Trade otherwise directs, be done in England to or by the existing registrar of joint-stock companies, or in his absence to or by such person as the Board of Trade may for the time being authorise, in Scotland to or by the existing registrar of joint-stock companies in Scotland, and in Ireland to or by the existing assistant registrar of joint-stock companies for Ireland, or by such person as the Board of Trade may for the time being authorise in Scotland or Ireland in the absence of the registrar; but in the event of the Board of Trade altering the constitution of the existing registry office, such act shall be done to or by such officer or officers and at such place or places with reference to the local situation of the registered offices of the companies to be registered as the Board of Trade may appoint.

PART VI.

APPLICATION OF ACT TO COMPANIES REGISTERED UNDER THE JOINT-STOCK COMPANIES ACT.

Definition of Joint-stock Companies Acts.

175. The expression "Joint-stock Companies Acts" as used in this Act shall mean "The Joint-stock Companies Act, 1856," "The Joint-stock

the Companies Acts which have been made to the office at Truro must be made to Somerset House. See Order of the Board of Trade, dated 22nd March, 1897, and published in the *London Gazette* of the 23rd March, 1897, p. 1677.

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Companies Act, 1856, 1857," "The Joint-stock Banking Companies Act, 1857," and "The Act to enable Joint-stock Banking Companies to be Formed on the Principle of Limited Liability," or any one or more of such Acts, as the case may require; but shall not include the Act passed in the eighth year of the reign of Her present Majesty, chapter one hundred and ten, and intituled "An Act for the Registration, Incorporation, and Regulation of Joint-stock Companies."

Application of Act to companies formed under Joint-stock Companies Acts.

176. Subject as hereinafter mentioned (*g*), this Act, with the exception of table A. in the first schedule, shall apply to companies formed and registered under the said Joint-stock Companies Acts, or any of them, in the same manner in the case of a limited company as if such company had been formed and registered under this Act as a company limited by shares, and in the case of a company other than a limited company as if such company had been formed and registered as an unlimited company under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint-stock Companies Acts, or any of them, and the power of altering regulations by special resolution given by this Act (*h*) shall, in the case of any company formed and registered under the said Joint-stock Companies Acts, or any of them, extend to altering any provisions contained in the table marked B. annexed to "The Joint-stock Companies Act, 1856," and shall also in the case of an unlimited company formed and registered as last aforesaid extend to altering any regulations relating to the amount of capital or its distribution into shares, notwithstanding such regulations are contained in the memorandum of association (*i*).

Application of Act to companies registered under Joint-stock Companies Acts.

177. This Act shall apply to companies registered but not formed under the said Joint-stock Companies Acts, or any of them, in the same manner as it is hereinafter declared (*k*) to apply to companies registered but not formed under this Act, with this qualification, that wherever reference is made expressly or impliedly to the date of registration, such date shall be deemed to refer to the date at which such companies were respectively registered under the said Joint-stock Companies Acts, or any of them (*l*).

Mode of transferring shares.

178. Any company registered under the said Joint-stock Companies Acts, or any of them, may cause its shares to be transferred in manner hitherto in use, or in such other manner as the company may direct

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PART VII.

COMPANIES AUTHORISED TO REGISTER UNDER THIS ACT.

Regulations as to registration of existing companies.

179. The following regulations shall be observed with respect to the registration of companies under this part of this Act; (that is to say,)

(1.) No company having the liability of its members limited by Act of Parliament or letters patent, and not being a joint-stock

(*g*) See *London India Rubber Co.*, 1 Ch. 329.

(*h*) See §§ 50 and 196, *ante*, pp. 163, and 461 *et seq.* As to the application to such companies of the Companies (Memorandum of Association) Act, 1890, see *ante*, pp. 457 *et seq.*

(*i*) See *ante*, p. 157.

(*k*) See Part VII.

(*l*) See *ante*, p. 157.

company as hereinafter defined (*m*), shall register under this Act in pursuance of this part thereof:

(2.) No company having the liability of its members limited by Act of Parliament, or by letters patent, shall register under this Act in pursuance of this part thereof as an unlimited company, or as a company limited by guarantee:

(3.) No company that is not a joint-stock company, as hereinafter defined (*m*), shall in pursuance of this part of this Act register under this Act as a company limited by shares:

(4.) No company shall register under this Act in pursuance of this part thereof, unless an assent to its so registering is given by a majority of such of its members as may be present, personally or by proxy, in cases where proxies are allowed by the regulations of the company, at some general meeting summoned for the purpose:

(5.) Where a company not having the liability of its members limited by Act of Parliament or letters patent, is about to register as a limited company, the majority required to assent as aforesaid shall consist of not less than three-fourths of the members present, personally or by proxy, at such last-mentioned general meeting:

(6.) Where a company is about to register as a company limited by guarantee, the assent to its being so registered shall be accompanied by a resolution declaring that each member undertakes to contribute to the assets of the company, in the event of the same being wound up, during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceased to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required, not exceeding a specified amount:

In computing any majority under this section, when a poll is demanded, regard shall be had to the number of votes to which each member is entitled according to the regulations of the company of which he is a member.

Companies capable of being registered. [21 Vict. c. 14, § 29.]

180. With the above exceptions, and subject to the foregoing regulations (*n*), every company existing at the time of the commencement of this Act, including any company registered under the said Joint-stock Companies Acts (*o*), consisting of seven or more members, and any company hereafter formed in pursuance of any Act of Parliament other than this Act, or of letters patent, or being a company engaged in working mines within and subject to the jurisdiction of the Stannaries, or being otherwise duly constituted by law (*p*), and consisting of seven or more members, may at any time hereafter register itself under this Act as an unlimited company, or a company limited by shares, or a company limited by guarantee; and no such registration shall be invalid by reason that it has taken place with a view to the company being wound up.

(*m*) § 181. See *ante*, pp. 156—158.

(*n*) See, also, §§ 182—184, and 188.

(*o*) The Act applies to them, even though they do not register. See §§ 176, 177, and *ante*, pp. 154, 157, and 834.

(*p*) See *R.* v. *Registrar of Joint-stock Cos.* [1891], 2 Q. B. 598, and *ante*, p. 174.

APPENDIX VI.

Definition of joint-stock company.

181. For the purposes of this part of this Act, so far as the same relates to the description of companies empowered to register as companies limited by shares, a joint-stock company shall be deemed to be a company having a permanent paid-up or nominal capital of fixed amount, divided into shares, also of fixed amount, or held and transferable as stock, or divided and held partly in one way and partly in the other, and formed on the principle of having for its members the holders of shares in such capital, or the holders of such stock, and no other persons; and such company when registered with limited liability under this Act shall be deemed to be a company limited by shares (*q*).

Proviso as to banking company. [22 Vict. c. 91, § 1.]

182. *No banking company claiming to issue notes in the United Kingdom shall be entitled to limited liability in respect of such issue, but shall continue subject to unlimited liability in respect thereof; and, if necessary, the assets shall be marshalled for the benefit of the general creditors, and the members shall be liable for the whole amount of the issue, in addition to the sum for which they would be liable as members of a limited company* (*r*).

Requisitions for registration by companies.

183. Previously to the registration, in pursuance of this part of this Act, of any joint-stock company (*s*), there shall be delivered to the registrar the following documents (that is to say,):—

(1.) A list showing the names, addresses, and occupations of all persons who on a day named in such list, and not being more than six clear days before the day of registration, were members of such company, with the addition of the shares held by such persons respectively, distinguishing, in cases where such shares are numbered, each share by its number:

(2.) A copy of any Act of Parliament, royal charter, letters patent, deed of settlement, contract of co-partnery, cost-book regulations, or other instrument constituting or regulating the company (*t*):

(3.) If any such joint-stock company is intended to be registered as a limited company, the above list and copy shall be accompanied by a statement specifying the following particulars; that is to say,

The nominal capital of the company and the number of shares into which it is divided;

The number of shares taken and the amount paid on each share;

The name of the company, with the addition of the word "limited" as the last word thereof (*u*);

With the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of the guarantee.

Requisitions for registration by existing company not being a joint-stock company.

184. Previously to the registration in pursuance of this part of this Act of any company not being a joint-stock company (*x*), there shall be delivered to the registrar a list showing the names, addresses, and occupations of the directors or other managers (if any) of the company, also a copy of any Act of Parliament, letters patent, deed of settlement,

(*q*) See *ante*, pp. 157, 158.

(*r*) This section was repealed and replaced by the Companies Act, 1879, § 6. See, also, § 188.

(*s*) § 181.

(*t*) See § 209, as to insurance companies already registered under 7 & 8 Vict. c. 110.

(*u*) See § 190.

(*x*) § 181.

contract of co-partnery, cost-book regulations, or other instrument constituting or regulating the company, with the addition, in the case of a company intended to be registered as a company limited by guarantee, of the resolution declaring the amount of guarantee.

Power for company to register amount of stock instead of shares.

185. Where a joint-stock company (y) authorised to register under this Act, has had the whole or any portion of its capital converted into stock, such company shall, as to the capital so converted, instead of delivering to the registrar a statement of shares, deliver to the registrar a statement of the amount of stock belonging to the company, and the names of the persons who were holders of such stock, on some day to be named in the statement, not more than six clear days before the day of registration. [21 Vict. c. 14, § 30.]

Authentication of statements.

186. The lists of members and directors, and any other particulars relating to the company hereby required to be delivered to the registrar, shall be verified by a declaration of the directors of the company delivering the same, or any two of them, or of any two other principal officers of the company, made in pursuance of the Act passed in the sixth year of the reign of his late Majesty King William the Fourth, chapter sixty-two. [20 Vict. c. 47, § 112.]

Registrar may require evidence as to nature of company.

187. The registrar may require such evidence as he thinks necessary for the purpose of satisfying himself whether an existing company is or not a joint-stock company as hereinbefore defined (z).

On registration of banking company with limited liability, notice to be given to customers.

188. Every banking company existing at the date of the passing of this Act which registers itself as a limited company shall, at least thirty days previous to obtaining a certificate of registration with limited liability, give notice that it is intended so to register the same to every person and partnership firm who have a banking account with the company; and such notice shall be given either by delivering the same to such person or firm, or leaving the same or putting the same into the post addressed to him or them at such address as shall have been last communicated or otherwise become known as his or their address to or by the company: and, in case the company omits to give any such notice as is hereinbefore required to be given, then as between the company and the person or persons only who are for the time being interested in the account in respect of which such notice ought to have been given, and so far as respects such account and all variations thereof down to the time at which such notice shall be given, but not further or otherwise, the certificate of registration with limited liability shall have no operation (a). [22 Vict. c. 91, § 3.]

Exemption of certain companies from payment of fees.

189. No fees shall be charged in respect of the registration in pursuance of this part of this Act of any company in cases where such company is not registered as a limited company, or where previously to its being registered as a limited company the liability of the shareholders was limited by some other Act of Parliament or by letters patent. [21 Vict. c. 14, § 32.]

Power to company to change name.

190. Any company authorised by this part of this Act to register with limited liability shall, for the purpose of obtaining registration with limited liability, change its name, by adding thereto the word "limited." [20 Vict. c. 47, § 114.]

Certificate of registration and incorporation of companies.

191. Upon compliance with the requisitions in this part of this Act contained with respect to registration, and upon payment of such fees, if any, as are payable under the tables marked B. and C. in the first schedule hereto, the registrar shall certify under his hand that the

(y) § 181.
(z) § 181.
(a) § 182. See, also, Comp. Act, 1879, § 6.

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[20 Vict. c. 47, § 113.]

company so applying for registration is incorporated as a company under this Act, and, in the case of a limited company, that it is limited; and thereupon such company shall be incorporated, and shall have perpetual succession and a common seal, with power to hold lands; and any banking company in Scotland so incorporated shall be deemed and taken to be a bank incorporated, constituted, or established by or under Act of Parliament (*b*).

Certificate to be evidence of compliance with Act.

[20 Vict. c. 47, § 115.]

192. *A certificate of incorporation given at any time to any company registered in pursuance of this part of this Act shall be conclusive evidence that all the requisitions herein contained in respect of registration under this Act have been complied with, and that the company is authorised to be registered under this Act as a limited or unlimited company, as the case may be; and the date of incorporation mentioned in such certificate shall be deemed to be the date at which the company is incorporated under this Act* (*c*).

Vesting of property in company.

193. All such property, real and personal, including all interests and rights in, to, and out of property, real and personal, and including obligations, and things in action, as may belong to or be vested in the company at the date of its registration under this Act, shall on registration pass to and vest in the company as incorporated under this Act for all the estate and interest of the company therein (*d*).

Registration not to affect obligations incurred previously thereto.

[20 Vict. c. 47, § 116, and 21 Vict. c. 49, § 8.]

194. The registration in pursuance of this part of this Act of any company shall not affect or prejudice the liability of such company to have enforced against it, or its right to enforce, any debt or obligation incurred, or any contract entered into, by, to, with, or on behalf of such company previously to such registration (*e*).

Continuation of existing actions and suits.

[20 Vict. c. 47, § 116, and 21 Vict. c. 49, § 10.]

195. All such actions, suits, and other legal proceedings as may at the time of the registration of any company registered in pursuance of this part of this Act have been commenced by or against such company, or the public officer or any member thereof, may be continued in the same manner as if such registration had not taken place; nevertheless execution shall not issue against the effects of any individual member of such company upon any judgment, decree, or order obtained in any action, suit, or proceeding so commenced as aforesaid; but in the event of the property and effects of the company being insufficient to satisfy such judgment, decree, or order, an order may be obtained for winding up the company (*f*).

Effect of registration.

[21 Vict. c. 14. § 33.]

196. When a company is registered under this Act in pursuance of this part thereof, all provisions contained in any Act of Parliament, deed of settlement, contract of co-partnery, cost-book regulations, letters patent, or other instrument constituting or regulating the company, including, in the case of a company registered as a company limited by guarantee, the resolution declaring the amount of the guarantee, shall be deemed to be conditions and regulations of the company, in the same manner and with the same incidents as if they were contained in a registered memorandum of association and articles of association; and all the provisions

(*b*) See § 18, *ante*, pp. 150 *et seq.*

(*c*) This section has been repealed by the Comp. Act, 1900, § 33, and replaced by § 1 of that Act. Compare § 18, and see on the repealed section *Ennis* v. *West Clare Rail. Co.*, 3 L. R. Ir. 94, and *ante*, p. 151. Compare § 188.

(*d*) See *ante*, p. 374, note (*c*).

(*e*) See *ante*, p. 175.

(*f*) See *ante*, pp. 373, 374.

of this Act shall apply to such company and the members, contributories, and creditors thereof, in the same manner in all respects as if it had been formed under this Act, subject to the provisions following; (that is to say),

(1.) That Table A. in the first schedule to this Act shall not, unless adopted by special resolution, apply to any company registered under this Act in pursuance of this part thereof:

(2.) That the provisions of this Act relating to the numbering of shares (*g*) shall not apply to any joint-stock company whose shares are not numbered (*h*):

(3.) That no company shall have power to alter any provision contained in any Act of Parliament relating to the company (*h*):

(4.) That no company shall have power, without the sanction of the Board of Trade, to alter any provision contained in any letters patent relating to the company:

(5.) That in the event of the company being wound up, every person shall be a contributory, in respect of the debts and liabilities of the company contracted prior to registration, who is liable, at law, or in equity, to pay or contribute to the payment of any debt or liability of the company contracted prior to registration, or to pay or contribute to the payment of any sum, for the adjustment of the rights of the members amongst themselves in respect of any such debt or liability; or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company, so far as relates to such debts or liabilities as aforesaid; and every such contributory shall be liable to contribute to the assets of the company, in the course of the winding up, all sums due from him in respect of any such liability as aforesaid; and in the event of the death, bankruptcy, or insolvency of any such contributory as last aforesaid, or marriage of any such contributory being a female, the provisions hereinbefore contained with respect to the representatives, heirs, and devisees of deceased contributories, and with reference to the assignees of bankrupt or insolvent contributories, and to the husbands of married contributories, shall apply (*i*):

(6.) That nothing herein contained shall authorise any company to alter any such provisions contained in any deed of settlement, contract of co-partnery, cost-book regulations, letters patent, or other instrument constituting or regulating the company, as would, if such company had been originally formed under this Act, have been contained in the memorandum of association, and are not authorised to be altered by this Act:

But nothing herein contained shall derogate from any power of altering its constitution or regulations which may be vested in any company registering under this Act in pursuance of this part thereof by virtue of any Act of Parliament, deed of settlement, contract of co-partnery, letters patent, or other instrument constituting or regulating the company (*k*).

(*g*) § 22.

(*h*) See Comp. Act, 1867, § 47.

(*i*) See §§ 74—78, 105, 106, 200, and *ante*, pp. 1041 *et seq.*; pp. 1144 *et seq.*, and 1160; and as to Industrial and Provident Societies, *ante*, p. 1232, and Benefit Building Societies, *ante*, pp. 1241, 1242.

(*k*) As to the power of a company registered under this Act to alter its memorandum of association, see § 12, and the Companies (Memorandum of

APPENDIX VI.

Power of Court to restrain further proceedings. [20 Vict. c. 47, § 84.]

197. The Court may, at any time after the presentation of a petition for winding up a company registered in pursuance of this part of this Act, and before making an order for winding up the company, upon the application by motion of any creditor of the company, restrain further proceedings in any action, suit, or legal proceeding against any contributory of the company as well as against the company as hereinbefore provided, upon such terms as the Court thinks fit (*l*).

Order for winding up company. [20 Vict. c. 47, § 73.]

198. Where an order has been made for winding up a company registered in pursuance of this part of the Act, in addition to the provisions hereinbefore contained (*m*); it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company except with the leave of the Court, and subject to such terms as the Court may impose (*n*).

PART VIII.

APPLICATION OF ACT TO UNREGISTERED COMPANIES.

Winding up of unregistered companies. [11 & 12 Vict. c. 45, §§ 1—3.]

199. Subject as hereinafter mentioned, any partnership, association, or company, except railway companies incorporated by Act of Parliament (*o*), consisting of more than seven members, and not registered under this Act, and hereinafter included under the term unregistered company (*p*), may be wound up under this Act; and all the provisions of this Act with respect to winding up shall apply to such company, with the following exceptions and additions (*q*).

(1.) An unregistered company shall, for the purpose of determining the Court having jurisdiction in the matter of the winding up, be deemed to be registered in that part of the United Kingdom where its principal place of business is situate (*r*); or, if it has a principal place of business situate in more than one part of the United Kingdom, then in each part of the United Kingdom where it has a principal place of business; moreover the principal place of business of an unregistered company, or (where it has a principal place of business situate in more than one part of the United Kingdom) such one of its principal places of business as is situate in that part of the United Kingdom in which proceedings are being instituted, shall for all the purposes of the winding up of such company be deemed to be the registered office of the company:

(2.) No unregistered company shall be wound up under this Act voluntarily or subject to the supervision of the Court (*s*):

Association) Act, 1890, and *ante*, pp. 457 *et seq.*; and as to its power to alter its articles of association, see §§ 50 and 176, and *ante*, pp. 461 *et seq.*

(*l*) See §§ 85, 195, 196, and also § 201, *ante*, pp. 905 *et seq.*, and 1116.

(*m*) See §§ 87 and 196.

(*n*) See §§ 195 and 202; and see *ante*, pp. 919, 920.

(*o*) See *ante*, pp. 834 *et seq.*

(*p*) This definition includes companies registered under the Acts of 1856–1858; but see as to such companies, *supra*, §§ 176, 177, and *ante*, pp. 834 *et seq.*

(*q*) See *ante*, pp. 834 *et seq.*

(*r*) See *Bristol Athenæum*, 43 Ch. D. 236, and *ante*, p. 837.

(*s*) See, as to Industrial and Pro-

(3.) The circumstances under which an unregistered company may be wound up are as follows (*t*): (that is to say,)

(a.) Whenever the company is dissolved, or has ceased to carry on business, or is carrying on business only for the purpose of winding up its affairs;

(b.) Whenever the company is unable to pay its debts;

(c.) Whenever the Court is of opinion that it is just and equitable that the company should be wound up:

(4.) An unregistered company shall, for the purposes of this Act, be deemed to be unable to pay its debts (*u*), [20 Vict. c. 47, § 68, and 11 & 12 Vict. c. 45, § 5.]

(a.) Whenever a creditor to whom the company is indebted, at law or in equity, by assignment or otherwise, in a sum exceeding fifty pounds then due, has served on the company, by leaving the same at the principal place of business of the company, or by delivering to the secretary or some director or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, a demand under his hand requiring the company to pay the sum so due, and the company has for the space of three weeks succeeding the service of such demand neglected to pay such sum, or to secure or compound for the same to the satisfaction of the creditor:

(b.) Whenever any action, suit, or other proceeding has been instituted against any member of the company for any debt or demand due, or claimed to be due, from the company, or from him in his character of member of the company, and notice in writing of the institution of such action, suit, or other legal proceeding having been served upon the company by leaving the same at the principal place of business of the company, or by delivering it to the secretary, or some director, manager, or principal officer of the company, or by otherwise serving the same in such manner as the Court may approve or direct, the company has not within ten days after service of such notice paid, secured, or compounded for such debt or demand, or procured such action, suit, or other legal proceeding to be stayed, or indemnified the defendant to his reasonable satisfaction against such action, suit, or other legal proceeding, and against all costs, damages, and expenses to be incurred by him by reason of the same:

(c.) Whenever, in England or Ireland, execution or other process issued on a judgment, decree, or order obtained in any Court in favour of any creditor in any proceeding at law or in equity, instituted by such creditor against the company, or any member thereof as such, or against any person authorised to be sued as nominal defendant on behalf of the company, is returned unsatisfied:

vident Societies, *ante*, p. 1231, and as to Benefit Building Societies, *ante*, p. 1240.

(*t*) See *ante*, pp. 848 *et seq.*

(*u*) See, as to registered companies, §§ 79, 80, and *ante*, pp. 849, 851.

(d.) Whenever, in the case of an unregistered company engaged in working mines within and subject to the jurisdiction of the Stannaries, a customary decree or order absolute for the sale of the machinery, materials, and effects of such mine has been made in a creditor's suit in the Court of the vice-warden (*x*).

(e.) Whenever, in Scotland, the *induciæ* of a charge for payment on an extract decree, or an extract registered bond or an extract registered protest, have expired without payment being made:

(f.) Whenever it is otherwise proved to the satisfaction of the Court that the company is unable to pay its debts.

Who to be deemed contributories in the event of company being wound up. [11 & 12 Vict. c. 45, § 3.]

200. In the event of an unregistered company being wound up every person shall be deemed to be a contributory who is liable, at law or in equity, to pay or contribute to the payment of any debt or liability of the company, or to pay or contribute to the payment of any sum for the adjustment of the rights of the members amongst themselves, or to pay or contribute to the payment of the costs, charges, and expenses of winding up the company; and every such contributory shall be liable to contribute to the assets of the company in the course of the winding up all sums due from him in respect of any such liability as aforesaid; but in the event of the death, bankruptcy, or insolvency of any contributory, or marriage of any female contributory, the provisions hereinbefore contained with respect to the personal representatives, heirs, and devisees of a deceased contributory, and to the assignees of a bankrupt or insolvent contributory, and to the husband of married contributories, shall apply (*y*).

Power of Court to restrain further proceedings. [20 Vict. c. 47, § 84.]

201. The Court may, at any time after the presentation of a petition for winding up an unregistered company, and before making an order for winding up the company, upon the application of any creditor of the company, restrain further proceedings in any action, suit, or proceeding against any contributory of the company, or against the company as hereinbefore provided (*z*), upon such terms as the Court thinks fit.

Effect of order for winding up company. [20 Vict. c. 47, § 73.]

202. Where an order has been made for winding up an unregistered company, in addition to the provisions hereinbefore contained in the case of companies formed under this Act (*a*), it is hereby further provided that no suit, action, or other legal proceeding shall be commenced or proceeded with against any contributory of the company in respect of any debt of the company, except with the leave of the Court, and subject to such terms as the Court may impose.

Property may be vested in *official* liquidators, &c. [11 & 12 Vict. c. 45, § 29.]

203. If any unregistered company has no power to sue and be sued in a common name, or if for any reason it appears expedient, the Court may by the order made for winding up such company, or by any subsequent order, direct that all such property, real, and personal, including all

(*x*) This jurisdiction is now vested in the County Courts of Cornwall, see Stannaries Court Abolition Act, 1896, and the Lord Chancellor's order under that Act printed *infra*. Creditor's suits are now abolished, see County Court Rules, Order Lc., Rule 5.

(*y*) See §§ 74–78, and 105, 106, § 196, cl. 5, and *ante*, pp. 1043, 1116, 1157, 1158; and as to Industrial and Provident Societies, *ante*, p. 1232, and Benefit Building Societies, *ante*, pp. 1241, 1242.

(*z*) See, also, §§ 85, 197, 199, 204; and *ante*, pp. 919 *et seq.*

(*a*) See §§ 87, 199, 204; and *ante*, pp. 919 *et seq.*

interest, claims, and rights into and out of property, real and personal, and including things in action, as may belong to or be vested in the company, or to or in any person or persons on trust for or on behalf of the company, or any part of such property, is to vest in the *official* liquidator or *official* liquidators (*b*) by his or their official name or names; and thereupon the same or such part thereof as may be specified in the order shall vest accordingly (*c*); and the *official* liquidator or *official* liquidators may, in his or their official name or names, or in such name or names and after giving such indemnity as the Court directs, bring or defend any actions, suits, or other legal proceeding relating to any property vested in him or them, or any actions, suits, or other legal proceedings necessary to be brought or defended for the purpose of effectually winding up the company and recovering the property thereof (*d*).

Provisions in this part of Act cumulative.

204. The provisions made by this part of the Act with respect to unregistered companies shall be deemed to be made in addition to and not in restriction of any provisions hereinbefore contained with respect to winding up companies by the Court; and the Court or *official* liquidator may, in addition to anything contained in this part of the Act, exercise any powers or do any act in the case of unregistered companies which might be exercised or done by it or him in winding up companies formed under this Act; but an unregistered company shall not, except in the event of its being wound up, be deemed to be a company under this Act, and then only to the extent provided by this part of this Act (*e*).

PART IX.

REPEAL OF ACTS, AND TEMPORARY PROVISIONS.

Repeal of Acts.

205. *After the commencement of this Act there shall be repealed the several Acts specified in the first part of the third schedule hereto, with this qualification, that* so much of the said Acts as is set forth in the second part of the said third schedule shall *be hereby re-enacted and* continue in force *as if unrepealed* (*f*).

Saving clause as to repeal.

206. No repeal hereby enacted shall affect (*g*),

(1.) *Anything duly done under any Acts hereby repealed:*

(2.) The incorporation of any company registered under any Act hereby repealed:

(3.) *Any right or privilege acquired or liability incurred under any Act hereby repealed:*

(4.) *Any penalty, forfeiture, or other punishment incurred in respect of any offence against any Act hereby repealed:*

(*b*) This does not render the liquidators personally liable, *Graham* v. *Edge*, 20 Q. B. D. 683. As to their style, see *ante*, p. 1283, note (*n*).

(*c*) See § 92, and *Ebsworth and Tidy's contract*, 42 Ch. D. 23, *ante*, p. 977.

(*d*) See *ante*, pp. 976 *et seq.*, &c.

(*e*) As to the scope of this section, see *Rudow* v. *Great Britain Mutual Life Ass. Society*, 17 Ch. D. 600.

(*f*) See §§ 170–173. The words in italics were repealed by the Stat. Law Rev. Act, 1893.

(*g*) See *ante*, p. 177. Sub-sections 1 and 3 were repealed by the Stat. Law Rev. Act, 1893, and sub-section 4 by the Stat. Law Rev. Act, 1875.

APPENDIX VI.

(5.) Table B. in the schedule annexed to the Joint-stock Companies Act, 1856, or any part thereof, so far as the same applies to any company existing at the time of the commencement of this Act (*h*).

Saving of existing proceedings for winding up.

207. *This section related to the winding up of companies under an order made or a resolution passed before the Act came into operation* (*i*).

Saving of conveyances, &c.

208. Where previously to the commencement of this Act any conveyance, mortgage, or other deed has been made in pursuance of any Act hereby repealed, such deed shall be of the same force as if this Act had not passed, and for the purposes of such deed such repealed Act shall be deemed to remain in full force.

Compulsory registration of certain companies.

209. Every insurance company completely (*k*) registered under the Act passed in the eighth year of the reign of her present Majesty, chapter one hundred and ten, intituled "An Act for the Registration, Incorporation, and Regulation of Joint-stock Companies," shall on or before the second day of November, one thousand eight hundred and sixty-two, and every other company required by any Act hereby repealed to register under the said Joint-stock Companies Acts, or one of such Acts, and which has not so registered, shall, on or before the expiration of the thirty-first day from the commencement of this Act, register itself as a company under this Act, in manner and subject to the regulations hereinbefore contained (*l*), with this exception, that no company completely registered under the said Act of the eighth year of the reign of her present Majesty shall be required to deliver to the registrar a copy of its deed of settlement; and for the purpose of enabling such insurance companies as are mentioned in this section to register under this Act, this Act shall be deemed to come into operation immediately on the passing thereof; nevertheless the registration of such companies shall not have any effect until the time of the commencement of this Act. No fees shall be charged in respect of the registration of any company required to register by this section.

Penalty on company not registering.

[21 Vict. c. 14, § 28.]

210. If any company required by the last section to register under this Act makes default in complying with the provisions thereof, then, from and after the day upon which such company is required to register under this Act, until the day on which such company is registered under this Act (which it is empowered to do at any time), the following consequences shall ensue; (that is to say,)

(1.) The company shall be incapable of suing either at law or in equity, but shall not be incapable of being made a defendant to a suit either at law or in equity (*m*):

(2.) No dividend shall be payable to any shareholder in such company:

(3.) Each director or manager of the company shall, for each day during which the company so being in default carries on

(*h*) See § 176.

(*i*) See *West Silver Bank Mining Co.*, 32 Beav. 226; *Fire Annihilator Co.*, ib. 563. This section is repealed by the Stat. Law Rev. Act, 1875.

(*k*) *I.e.*, under §§ 7 *et seq.*; not provisionally registered under § 4, nor simply registered under § 58. See *ante*, pp. 154, 155.

(*l*) See § 203. § 180 enables these companies to register with limited liability. See *ante*, pp. 154, 155, and 175. § 38 applies to companies registered under this section; *Ramsay's case*, 3 Ch. D. 388.

(*m*) See *ante*, pp. 174, 175.

business, incur a penalty (*mm*) not exceeding five pounds, and such penalty may be recovered by any person, whether a shareholder or not in the company, and be applied by him to his own use: Nevertheless, such default shall not render the company so being in default illegal, nor subject it to any penalty or disability, other than as specified in this section; and registration under this Act shall cancel any penalty or forfeiture, and put an end to any disability which any company may have incurred under any Act hereby repealed by reason of its not having registered under the Joint-stock Companies Acts, 1856, 1857, or one of them.

Temporary power for companies to change registered office.

211 and 212. *These sections conferred power on the Board of Trade to change the registered office of any company from any one part of the United Kingdom of Great Britain and Ireland, to any other part thereof, upon application made within one year from the passing of the Act* (*n*).

FIRST SCHEDULE.

TABLE A. (see §§ 14, 15) (*o*).

REGULATIONS FOR MANAGEMENT OF A COMPANY LIMITED BY SHARES (*p*).

Shares (*q*).

First Schedule. Table A.

(1.) If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share.

(2.) Every member shall, on payment of one shilling, or such less sum as the company in general meeting may prescribe, be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him, and the amount paid up thereon (*r*).

(3.) If such certificate is worn out or lost, it may be renewed, on payment of one shilling, or such less sum as the company in general meeting may prescribe.

(*mm*) As to recovery of penalties, see § 65.

(*n*) §§ 211 and 212 are repealed by the Statute Law Rev. Act, 1875.

(*o*) This table corresponds to table B. in the Act of 1856. The two are substantially alike in most respects. The regulations in the above table apply to companies formed under this Act, and limited by shares, unless specially excluded. (See § 15.) But they do not, unless specially adopted, apply to companies existing before the passing of the Act, and registered under it: § 196: see also § 176.

The Board of Trade has power to alter these regulations (see § 71); and every company to which they apply can alter them by a special resolution. See § 50, and *ante*, pp. 461 *et seq.*, and 476.

(*p*) As to the construction of companies' regulations, see *ante*, pp. 162, 163, and 226 *et seq.*

(*q*) Shares are personal estate, and must be numbered. See § 22 of the Act. See *ante*, p. 630. As to allotment of shares, see Comp. Act, 1900, §§ 4 and 5.

(*r*) See § 31 of the Act. As to such certificates, see *ante*, pp. 82, 667 *et seq.*, and 1079.

Calls on Shares (*s*).

(4.) The directors may from time to time make such calls upon the members in respect of all monies unpaid on their shares as they think fit, provided that twenty-one days' notice at least is given of each call (*t*); and each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors (*u*).

(5.) A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed (*v*).

(6.) If the call payable in respect of any share is not paid before or on the day appointed for payment thereof, the holder for the time being of such share shall be liable to pay interest for the same at the rate of five pounds per cent. per annum from the day appointed for the payment thereof to the time of the actual payment.

(7.) The directors may, if they think fit, receive from any member willing to advance the same all or any part of the monies due upon the shares held by him beyond the sums actually called for; and upon the monies so paid in advance, or so much thereof as from time to time exceeds the amount of the calls then made upon the shares in respect of which such advance has been made, the company may pay interest at such rate as the member paying such sum in advance and the directors agree upon (*x*).

Transfers of shares (*y*).

(8.) The instrument of transfer of any share in the company shall be executed both by the transferor and transferee; and the transferor shall be deemed to remain a holder of such share until the name of the transferee is entered in the register book in respect thereof.

(9.) Shares in the company shall be transferred in the following form:—I A. B. of , in consideration of the sum of pounds paid to me by C. D. of , do hereby transfer to the said C. D. the share [or shares], numbered , standing in my name in the books of the company, to hold unto the said C. D., his executors, administrators, and assigns, subject to the several conditions on which I held the same at the time of the execution hereof; and I, the said C. D., do hereby agree to take the said share [or shares] subject to the same conditions. As witness our hands the day of .

(*s*) See, on this subject, *ante*, pp. 573 *et seq.*

(*t*) See, as to giving notices, Nos. 95–97; and see *ante*, pp. 573 *et seq.*

(*u*) § 16 makes calls specialty debts.

(*v*) See *ante*, p. 584.

(*x*) Interest is payable though no profits have been earned. *Lock* v. *Queensland Investment Co.* [1896], A. C. 461, affirming [1896], 1 Ch. 397, and approving *Dale* v. *Martin*, 11 L. R., Ir. 371, affirming 9 ib. 498.

(*y*) See § 22. As to the transfer of shares, see *ante*, pp. 645 *et seq.*, and as to sales, see pp. 673 *et seq.*

(10.) The company may decline to register any transfer of shares made by a member who is indebted to them (z).

(11.) The transfer books shall be closed during the fourteen days immediately preceding the ordinary general meeting in each year.

Transmission of shares.

(12.) The executors or administrators of a deceased member shall be the only persons recognised by the company as having any title to his share.

(13.) Any person becoming entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may be registered as a member upon such evidence being produced as may from time to time be required by the company.

(14.) Any person who has become entitled to a share in consequence of the death, bankruptcy, or insolvency of any member, or in consequence of the marriage of any female member, may, instead of being registered himself, elect to have some person to be named by him registered as a transferee of such share (a).

(15.) The person so becoming entitled shall testify such election by executing to his nominee an instrument of transfer of such share.

(16.) The instrument of transfer shall be presented to the company, accompanied with such evidence as the directors may require to prove the title of the transferor; and thereupon the company shall register the transferee as a member.

Forfeiture of shares (b).

(17.) If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter, during such time as the call remains unpaid, serve a notice on him (c), requiring him to pay such call, together with interest and any expenses that may have accrued by reason of such non-payment.

(18.) The notice shall name a further day, on or before which such call, and all interest and expenses that have accrued by reason of such non-payment, are to be paid. It shall also name the place where payment is to be made (the place so named being either the registered office of the company or some other place at which calls of the company are usually made payable). The notice shall also state that, in the event of non-payment at or before the time and at the place appointed, the shares in respect of which such call was made will be liable to be forfeited.

(19.) If the requisitions of any such notice as aforesaid are not complied with, any share in respect of which such notice has

(z) See *ante*, pp. 646, 648, 650, 652, and pp. 1131 *et seq.*

(a) See, also, as to executors and administrators, § 24 of the Act, and *ante*, pp. 649, 650, 731 *et seq.*, and 1108 *et seq.*, and as to trustees in bankruptcy, pp. 748 *et seq.*, and 1112.

(b) See on this subject, *ante*, pp. 724 *et seq.*, and pp. 1141 *et seq.*

(c) The service may be personal, or by post. See Nos. 95–97. In case of death, see *Allen* v. *Gold Reefs, &c., Ld.* [1900], 1 Ch. 656, and *ante*, p. 477, note (e).

been given may, at any time thereafter, before payment of all calls, interest and expenses due in respect thereof has been made, be forfeited by a resolution of the directors to that effect.

(20.) Any share so forfeited shall be deemed to be the property of the company, and may be disposed of in such manner as the company in general meeting thinks fit (*d*).

(21.) Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of the forfeiture (*e*).

(22.) A statutory declaration in writing, that the call in respect of a share was made and notice thereof given, and that default in payment of the call was made, and that the forfeiture of the share was made by a resolution of the directors to that effect, shall be sufficient evidence of the facts therein stated, as against all persons entitled to such share; and such declaration and the receipt of the company for the price of such share shall constitute a good title to such share; and a certificate of proprietorship shall be delivered to a purchaser, and thereupon he shall be deemed the holder of such share discharged from all calls due prior to such purchase; and he shall not be bound to see to the application of the purchase money, nor shall his title to such share be affected by any irregularity in the proceedings in reference to such sale.

Conversion of shares into stock (*f*).

(23.) The directors may, with the sanction of the company previously given in general meeting, convert any paid-up shares into stock (*g*).

(24.) When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the same manner and subject to the same regulations as and subject to which any shares in the capital of the company may be transferred, or as near thereto as circumstances admit (*h*).

(25.) The several holders of stock shall be entitled to participate in the dividends and profits of the company according to the amount of their respective interests in such stock; and such interest shall, in proportion to the amount thereof, confer on the holders thereof respectively the same privileges and advantages for the purpose of voting at meetings of the company, and for other purposes, as would have been conferred by shares of equal amount in the capital of the company; but so that none of such privileges or advantages, except the participation in the dividends and profits of the company, shall be conferred by any such aliquot part of consolidated stock as would not, if existing in shares, have conferred such privileges or advantages (*i*).

(*d*) The disposal of forfeited shares is special business. See Nos. 35, 36.

(*e*) See *ante*, pp. 728, 729, and 1141.

(*f*) As to reconversion of stock into shares, see Comp. Act, 1900, § 29.

(*g*) See the Act, §§ 12, 28, 34, and *ante*, p. 563.

(*h*) See the Act, § 29.

(*i*) See § 29 of the Act, and *ante*, p. 563.

Increase in capital (*j*).

(26.) The directors may, with the sanction of a special resolution of the company previously given in general meeting, increase its capital by the issue of new shares; such aggregate increase to be of such amount, and to be divided into shares of such respective amounts, as the company in general meeting directs, or, if no direction is given, as the directors think expedient.

(27.) Subject to any direction to the contrary that may be given by the meeting that sanctions the increase of capital, all new shares shall be offered to the members in proportion to the existing shares held by them (*k*); and such offer shall be made by notice specifying the number of shares to which the member is entitled, and limiting a time within which the offer, if not accepted, will be deemed to be declined; and after the expiration of such time, or on the receipt of an intimation from the member to whom such notice is given that he declines to accept the shares offered, the directors may dispose of the same in such manner as they think most beneficial to the company.

(28.) Any capital raised by the creation of new shares shall be considered as part of the original capital, and shall be subject to the same provisions with reference to the payment of calls, and the forfeiture of shares on non-payment of calls, or otherwise, as if it had been part of the original capital.

General meetings (*l*).

(29.) The first general meeting shall be held at such time, not being more than six months after the registration of the company, and at such place, as the directors may determine (*m*).

(30.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting; and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(31.) The above-mentioned general meetings shall be called ordinary meetings: all other general meetings shall be called extraordinary (*n*).

(32.) The directors may, whenever they think fit, and they shall upon a requisition made in writing by not less than one-fifth in number of the members of the company, convene an extraordinary general meeting (*o*).

(33.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company (*o*).

(*j*) See § 12 of the Act, and *ante*, pp. 551, 556, and as to stamp, see *ante*, p. 555.

(*k*) As to deceased members, see *ante*, p. 536.

(*l*) See § 49 of the Act, and as to meetings and the proceedings at them, *ante*, pp. 421 *et seq.*, 477.

(*m*) See now Companies Act, 1900, § 12, as to the first or "Statutory" meeting, and *ante*, pp. 467 and 473.

(*n*) See *ante*, p. 425.

(*o*) See now Companies Act, 1900, § 13.

(34.) Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other members amounting to the required number, may themselves convene an extraordinary general meeting (*p*).

Proceedings at general meetings (*q*).

(35.) Seven days' notice at the least (*r*), specifying the place, the day, and the hour of meeting, and in case of special business (*s*) the general nature of such business, shall be given to the members in manner hereinafter mentioned (*t*), or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting (*u*).

(36.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of sanctioning a dividend and the consideration of the accounts, balance-sheets, and the ordinary report of the directors (*x*).

(37.) No business shall be transacted at any general meeting (*y*), except the declaration of a dividend, unless a quorum of members is present at the time when the meeting proceeds to business, and such quorum shall be ascertained as follows; that is to say, if the persons who have taken shares in the company (*z*) at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed twenty (*a*).

(38.) If within one hour from the time appointed for the meeting a quorum is not present, the meeting, if convened upon the requisition of members, shall be dissolved: in any other case, it shall stand adjourned to the same day in the next week, at the same time and place; and if at such adjourned meeting a quorum is not present, it shall be adjourned *sine die*.

(39.) The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company (*b*).

(40.) If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for

(*p*) See § 52 of the Act, and Companies Act, 1900, § 13.

(*q*) See *ante*, pp. 421 *et seq.*, 477. As to proceedings at the Statutory meeting, see Comp. Act, 1900, § 12.

(*r*) See § 52 of the Act, and *ante*, p. 423.

(*s*) See No. 36, and *ante*, p. 423.

(*t*) See Nos. 95, 97.

(*u*) See *ante*, pp. 421, 422.

(*x*) See, too, as to appointment of auditors, and their remuneration, Comp. Act, 1900, §§ 21 and 22, and the consideration of their reports, ib. § 23.

(*y*) As to the business at the statutory meeting, see Comp. Act, 1900, § 12.

(*z*) This expression should apparently be, "if the *members* of the company."

(*a*) See, as to quorums, *ante*, pp. 208, 414.

(*b*) See § 52 of the Act. As to the position of a chairman, see *ante*, p. 427.

holding the meeting, the members present shall choose some one of their number to be chairman (c).

(41.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place (d).

(42.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company (e), shall be sufficient evidence (f) of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(43.) If a poll is demanded by five or more members it shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting. In the case of an equality of votes at any general meeting the chairman shall be entitled to a second or casting vote.

Votes of members (g).

(44.) Every member shall have one vote for every share up to ten: he shall have an additional vote for every five shares beyond the first ten shares up to one hundred, and an additional vote for every ten shares beyond the first hundred shares (h).

(45.) If any member is a lunatic or idiot, he may vote by his committee, curator bonis, or other legal curator.

(46.) If one or more persons are jointly entitled to a share or shares, the member whose name stands first on the register of members as one of the holders of such share or shares, and no other, shall be entitled to vote in respect of the same.

(47.) No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of three months from the registration of the company, unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

(48.) Votes may be given either personally or by proxy (i).

(49.) The instrument appointing a proxy shall be in writing, under the hand of the appointor, or if such appointor is a corporation, under their common seal, and shall be attested by one or more witness or witnesses: no person shall be appointed a proxy who is not a member of the company.

(50.) The instrument appointing a proxy shall be deposited at the registered office of the company not less than seventy-two hours

(c) See § 52 of the Act.

(d) See *ante*, pp. 425 and 478.

(e) See, as to this, § 67 of the Act.

(f) In case of a special resolution, see § 51.

(g) See *ante*, pp. 428 *et seq.*

(h) See § 52 of the Act.

(i) See *ante*, pp. 429, 430.

before the time for holding the meeting at which the person named in such instrument proposes to vote; but no instrument appointing a proxy shall be valid after the expiration of twelve months from the date of its execution.

(51.) Any instrument appointing a proxy shall be in the following form (*k*):—

Company limited.

I of in the county of being a member of the Company limited, and entitled to vote *or* votes, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof [*or* at any meeting of the company that may be held in the year].

As witness my hand, this day of .

Signed by the said in the presence of .

Directors (*l*).

(52.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association (*ll*).

(53.) Until directors are appointed, the subscribers of the memorandum of association shall be deemed to be directors (*m*).

(54.) The future remuneration of the directors, and their remuneration for services performed previously to the first general meeting, shall be determined by the company in general meeting.

Powers of directors (*n*).

(55.) The business of the company shall be managed by the directors (*o*), who may pay all expenses incurred in getting up (*p*) and registering the company, and may exercise all such powers of the company as are not by the foregoing Act or by these articles, required to be exercised by the company in general meeting, subject nevertheless to any regulations of these articles, to the provisions of the foregoing Act, and to such regulations, being not inconsistent with the aforesaid regulations or provisions, as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made (*q*).

(*k*) This must be stamped. See *ante*, p. 430.

(*l*) See *ante*. pp. 413 *et seq.*, 466 *et seq.* See as to directors who are named in a prospectus or articles of association, Comp. Act, 1900, § 2.

(*ll*) See *ante*, p. 471, note (*a*).

(*m*) See *ante*, pp. 414, and 471, note (*z*).

(*n*) See *ante*, pp. 205 *et seq.*, 413 *et seq.*, pp. 530 *et seq.*, and p. 798, &c.

(*o*) As to commencement of business, see Comp. Act, 1900, § 6. As to their duties at the statutory meeting, see ib. § 12.

(*p*) As to the payment of commissions for underwriting, see Comp. Act, 1900, § 8.

(*q*) See *infra*, No. 71.

(56.) The continuing directors may act notwithstanding any vacancy in their body.

Disqualification of directors (*r*).

(57.) The office of director shall be vacated—

If he holds any other office or place of profit under the company;

If he becomes bankrupt or insolvent;

If he is concerned in or participates in the profits of any contract with the company;

But the above rules shall be subject to the following exceptions: That no director shall vacate his office by reason of his being member of any company which has entered into contracts with or done any work for the company of which he is director; nevertheless he shall not vote in respect of such contract of work; and if he does so vote his vote shall not be counted.

Rotation of directors.

(58.) At the first ordinary meeting after the registration of the company the whole of the directors shall retire from office; and at the first ordinary meeting in every subsequent year one-third of the directors for the time being, or if their number is not a multiple of three, then the number nearest to one-third, shall retire from office.

(59.) The one-third or other nearest number to retire during the first and second years ensuing the first ordinary meeting of the company shall, unless the directors agree among themselves, be determined by ballot: in every subsequent year the one-third or other nearest number who have been longest in office shall retire.

(60.) A retiring director shall be re-eligible.

(61.) The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons.

(62.) If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up, the meeting shall stand adjourned till the same day in the next week, at the same time and place (*s*); and if at such adjourned meeting the places of the vacating directors are not filled up, the vacating directors, or such of them as have not had their places filled up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

(63.) The company may from time to time, in general meeting, increase or reduce the number of directors, and may also determine in what rotation such increased or reduced number is to go out of office.

(*r*) See *ante*, pp. 415 *et seq.*, 472. If the articles require directors to hold a share qualification, see Comp. Act, 1900, §§ 2 and .

(*s*) This clause is directory only, see *Ex parte Kennedy*, 44 Ch. D. pp. 482, 483.

(64.) Any casual vacancy (*t*) occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

(65.) The company, in general meeting, may, by a special resolution (*u*), remove any director before the expiration of his period of office, and may by an ordinary resolution appoint another person in his stead; the person so appointed shall hold office during such time only as the director in whose place he is appointed would have held the same if he had not been removed (*x*).

Proceedings of directors (*y*).

(66.) The directors may meet together for the despatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business: questions arising at any meeting shall be decided by a majority of votes: in case of equality of votes the chairman shall have a second or casting vote: a director may at any time summon a meeting of the directors.

(67.) The directors may elect a chairman at their meetings, and determine the period for which he is to hold office; but if no such chairman is elected, or if at any meeting the chairman is not present at the time appointed for holding the same, the directors present shall choose some one of their number to be chairman of such meeting.

(68.) The directors may delegate any of their powers to committees consisting of such member or members of their body as they think fit: any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors (*z*).

(69.) A committee may elect a chairman of their meetings: if no such chairman is elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting.

(70.) A committee may meet and adjourn as they think proper: questions arising at any meeting shall be determined by a majority of votes of the members present; and in case of an equality of votes the chairman shall have a second or casting vote.

(71.) All acts done by any meeting of the directors or of a committee of directors, or by any person acting as a director, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such directors or persons acting as aforesaid, or that they or any of them were disqualified,

(*t*) *Ante*, p. 418. As to the meaning of the word "casual," see *York Tramways Co.* v. *Willows*, 8 Q. B. D. p. 694; *Munster* v. *Cammell Co.*, 21 Ch. D. p. 187.

(*u*) See the Act, § 51.

(*x*) *Ante*, pp. 418, 419 and 472.

(*y*) See *ante*, pp. 413 *et seq.*, and 466 *et seq.*, and as to boards and quorums, *ante*, pp. 205–208, 228 and 414.

(*z*) See the references in the last note.

be as valid as if every such person had been duly appointed and was qualified to be a director (*a*).

Dividends (*b*).

(72.) The directors may, with the sanction of the company in general meeting, declare a dividend to be paid to the members in proportion to their shares.

(73.) No dividend shall be payable except out of the profits arising from the business of the company.

(74.) The directors may, before recommending any dividend, set aside out of the profits of the company such sum as they think proper as a reserved fund to meet contingencies, or for equalising dividends, or for repairing or maintaining the works connected with the business of the company, or any part thereof; and the directors may invest the sum so set apart as a reserved fund upon such securities as they may select.

(75.) The directors may deduct from the dividends payable to any member all such sums of money as may be due from him to the company on account of calls or otherwise.

(76.) Notice of any dividend that may have been declared shall be given to each member in manner hereinafter mentioned (*c*); and all dividends unclaimed for three years after having been declared may be forfeited by the directors for the benefit of the company.

(77.) No dividend shall bear interest as against the company.

Accounts (*d*).

(78.) The directors shall cause true accounts to be kept,—

Of the stock in trade of the company;

Of the sums of money received and expended by the company, and the matter in respect of which such receipt and expenditure takes place; and

Of the credits and liabilities of the company:

The books of account shall be kept at the registered office of the company, and, subject to any reasonable restrictions as to the time and manner of inspecting the same that may be imposed by the company in general meeting, shall be open to the inspection of the members during the hours of business (*e*).

(79.) Once at the least in every year the directors shall lay before the company in general meeting a statement of the income and expenditure for the past year, made up to a date not more than three months before such meeting.

(80.) The statement so made shall show, arranged under the most convenient heads, the amount of gross income, distinguishing the several sources from which it has been derived, and the amount of gross expenditure, distinguishing the expense of the

(*a*) See § 67 of the Act, and *ante*, pp. 415, 416.

(*b*) See *ante*, pp. 598 *et seq.*

(*c*) See Nos. 95–97.

(*d*) See *ante*, pp. 615–619, 620 *et seq.*, Comp. Act, 1900, §§ 21–23, and *ante*, p. 623; and as to accounts of banking companies, see, also, Comp. Act, 1879, § 7. As to the accounts to be laid before the statutory meeting, see Comp. Act, 1900, § 12.

(*e*) See *ante*, pp. 615 *et seq.*

establishment, salaries, and other like matters; every item of expenditure fairly chargeable against the year's income shall be brought into account, so that a just balance of profit and loss may be laid before the meeting; and in cases where any item of expenditure which may in fairness be distributed over several years has been incurred in any one year, the whole amount of such item shall be stated, with the addition of the reasons why only a portion of such expenditure is charged against the income of the year.

(81.) A balance-sheet shall be made out in every year, and laid before the company in general meeting; and such balance-sheet shall contain a summary of the property and liabilities of the company arranged under the heads appearing in the form annexed to this table, or as near thereto as circumstances admit (*f*).

(82.) A printed copy of such balance-sheet shall, seven days previously to such meeting, be served on every member in the manner in which notices are hereinafter directed to be served (*g*).

Audit (*h*).

(83.) Once at the least in every year the accounts of the company shall be examined, and the correctness of the balance-sheet ascertained, by one or more auditor or auditors.

(84.) The first auditors shall be appointed by the directors: subsequent auditors shall be appointed by the company in general meeting (*i*).

(85.) If one auditor only is appointed, all the provisions herein contained relating to auditors shall apply to him.

(86.) The auditors may be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company; and no director or other officer of the company is eligible during his continuance in office (*k*).

(87.) The election of auditors shall be made by the company at their ordinary meeting in each year (*l*).

(88.) The remuneration of the first auditors shall be fixed by the directors; that of subsequent auditors shall be fixed by the company in general meeting (*m*).

(89.) Any auditor shall be re-eligible on his quitting office.

(90.) If any casual vacancy occurs in the office of any auditor appointed by the company, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the same (*mm*).

(*f*) See form at end of this table, *infra*, p. 1328.

(*g*) See No. 95.

(*h*) These articles are now subject to the provisions as to audit contained in the Companies Act, 1900, §§ 21 to 23. See *ante*, pp. 615–619 and 620 *et seq.* And as to the accounts to be laid before the statutory meeting, see Comp. Act, 1900, § 12 (3).

(*i*) See Comp. Act, 1900, § 21.

(*k*) Ib. § 21 (3).

(*l*) Ib. § 21 (1).

(*m*) Compare ib. § 22.

(*mm*) Compare ib. § 21 (5).

(91.) If no election of auditors is made in manner aforesaid, the Board of Trade may, on the application of not less than five members of the company, appoint an auditor for the current year, and fix the remuneration to be paid to him by the company for his services (*n*).

(92.) Every auditor shall be supplied with a copy of the balance-sheet, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto (*o*).

(93.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company: he may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may in relation to such accounts examine the directors or any other officer of the company (*o*).

(94.) The auditors shall make a report to the members upon the balance-sheet and accounts; and in every such report they shall state whether, in their opinion, the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and, in case they have called for explanations or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting (*o*).

Notices (*p*).

(95.) A notice may be served by the company upon any member either personally, or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

(96.) All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members; and notice so given shall be sufficient notice to all the holders of such share.

(97.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notices was properly addressed and put into the post-office.

(*n*) Compare ib. § 21 (2).

(*o*) Compare ib. § 23.

(*p*) These clauses only apply to notices in the ordinary course of a company's business, see *London and Staffordshire Fire Ins. Co.*, 24 Ch. D. 149. In case of deceased members, see *ante*, p. 477, note (*c*). As to service of notices on the company, see Act, 1862, § 62.

DR. BALANCE SHEET (*q*) of the Co., made up to 18 . CR.

CAPITAL AND LIABILITIES.			£ s. d.	£ s. d.
I. CAPITAL .		Showing:		
	1	The Number of Shares		
	2	The Amount paid per Share . . .		
	3	If any Arrears of Calls, the Nature of the Arrear, and the Names of the Defaulters.		
	4	The Particulars of any forfeited Shares		
II. DEBTS AND LIABILITIES of the Company .		Showing:		
	5	The Amount of Loans on Mortgages or Debenture Bonds		
	6	The Amount of Debts owing by the Company, distinguishing—		
		(*a.*) Debts for which Acceptances have been given . . .		
		(*b.*) Debts to Tradesmen for Supplies of Stock in Trade or other Articles . . .		
		(*c.*) Debts for Law Expenses . .		
		(*d.*) Debts for Interest on Debentures or other Loans . .		
		(*e.*) Unclaimed Dividends . .		
		(*f.*) Debts not enumerated above.		
VI. RESERVE FUND . .		Showing:		
		The Amount set aside from Profits to meet Contingencies		
VII. PROFIT AND LOSS .		Showing:		
		The disposable Balance for Payment of Dividend, &c.		
CONTINGENT LIABILITIES .		Claims against the Company not acknowledged as Debts		
		Monies for which the Company is contingently liable		

PROPERTY AND ASSETS.			£ s. d.	£ s. d.
III. PROPERTY held by the Company. .		Showing:		
	7	Immovable Property, distinguishing—		
		(*a.*) Freehold Land . . .		
		(*b.*) „ Buildings . . .		
		(*c.*) Leasehold „		
	8	Movable Property, distinguishing—		
		(*d.*) Stock in Trade		
		(*e.*) Plant		
		The Cost to be stated with Deductions for Deterioration in Value as charged to the Reserve Fund or Profit and Loss.		
IV. DEBTS owing to the Company		Showing:		
	9	Debts considered good for which the Company hold Bills or other Securities		
	10	Debts considered good for which the Company hold no Security . .		
	11	Debts considered doubtful and bad .		
		Any Debt due from a Director or other Officer of the Company to be separately stated		
V. CASH AND INVESTMENTS .		Showing:		
	12	The Nature of Investment and Rate of Interest		
	13	The Amount of Cash, where lodged, and if bearing Interest . . .		

(*q*) See clauses 81 and 82 of the foregoing Table A. As to balance-sheets of banking companies registered after the passing of the Companies Act, 1879, see Companies Act, 1879, § 8. As to the auditor's duty to report on the balance-sheets, see Companies Act, 1900, § 23.

TABLE B. (See § 17.)

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES BY A COMPANY HAVING A CAPITAL DIVIDED INTO SHARES (*qq*).

	£	s.	d.
For registration of a company whose nominal capital does not exceed 2,000*l.*, a fee of	2	0	0
For registration of a company whose nominal capital exceeds 2,000*l.*, the above fee of 2*l.*, with the following additional fees, regulated according to the amount of nominal capital; (that is to say,)	£	s.	d.
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 2,000*l.*, up to 5,000*l.* .	1	0	0
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 5,000*l.*, up to 100,000*l.* .	0	5	0
For every 1,000*l.* of nominal capital, or part of 1,000*l.*, after the first 100,000*l.*	0	1	0
For registration of any increase of capital made after the first registration of the company, the same fees per 1,000*l.*, or part of 1,000*l.*, as would have been payable if such increased capital had formed part of the original capital at the time of registration.			
Provided that no company shall be liable to pay in respect of nominal capital on registration, or afterwards, any greater amount of fees than 50*l.*, taking into account in the case of fees payable on an increase of capital after registration the fees paid on registration.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act (*r*), the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association .	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the registrar of companies, a fee of . .	0	5	0

TABLE C. (See § 17.)

Table C.

TABLE OF FEES TO BE PAID TO THE REGISTRAR OF JOINT-STOCK COMPANIES BY A COMPANY NOT HAVING A CAPITAL DIVIDED INTO SHARES.

	£	s.	d.
For registration of a company whose number of members as stated in the articles of association does not exceed 20 . .	2	0	0
For registration of a company whose number of members, as stated in the articles of association, exceeds 20, but does not exceed 100	5	0	0

(*qq*) The Stamp Act, 1891, § 112, requires a statement of the amount of nominal share capital of any company registered with limited liability, and of any increase of such capital, to be sent to the registrar, and imposes a stamp duty of 2*s.* per 100*l.* of capital.

(*r*) See Comp. Act, 1862, §§ 189 and 209.

APPENDIX VI.
Table C.

	£	s.	d.
For registration of a company whose number of members, as stated in the articles of association, exceeds 100, but is not stated to be unlimited, the above fee of 5*l.*, with an additional 5*s.* for every 50 members or less number than 50 members after the first 100.			
For registration of a company in which the number of members is stated in the articles of association to be unlimited, a fee of	20	0	0
For registration of any increase on the number of members made after the registration of the company in respect of every 50 members, or less than 50 members, of such increase	0	5	0
Provided that no one company shall be liable to pay on the whole a greater fee than 20*l.* in respect of its number of members, taking into account the fee paid on the first registration of the company.			
For registration of any existing company, except such companies as are by this Act exempted from payment of fees in respect of registration under this Act (*s*), the same fee as is charged for registering a new company.			
For registering any document hereby required or authorised to be registered, other than the memorandum of association .	0	5	0
For making a record of any fact hereby authorised or required to be recorded by the registrar of companies, a fee of . .	0	5	0

FORM D.

Form D.

FORM OF STATEMENT REFERRED TO IN PART III. OF THE ACT.
(See § 44.)

* The capital of the company is , divided into shares of each.

The number of shares issued is

Calls to the amount of pounds per share have been made, under which the sum of pounds has been received.

The liabilities of the company on the first day of January (*or* July) were,—

Debts owing to sundry persons by the company:
On judgment, £
On specialty, £
On notes or bills, £
On simple contracts, £
On estimated liabilities, £

The assets of the company on that day were,—
Government securities [*stating them*], £
Bills of exchange and promissory notes, £
Cash at the bankers, £
Other securities, £

* If the company has no capital divided into shares, the portion of the statement relating to capital and shares must be omitted.

(*s*) See § 189.

SECOND SCHEDULE (t).

FORM A. (See § 8.)

MEMORANDUM OF ASSOCIATION OF A COMPANY LIMITED BY SHARES.

1st. The name of the company is "The Eastern Steam Packet Company, Limited."

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the conveyance of passengers and goods in ships or boats between such places as the company may from time to time determine, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. The liability of the members is limited.

5th. The capital of the company is two hundred thousand pounds, divided into one thousand shares of two hundred pounds each.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association; and we respectively agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			Number of Shares taken by each Subscriber.
"1. John Jones of	in the county of	Merchant	200
"2. John Smith of	in the county of	. .	25
"3. Thomas Green of	in the county of	. . .	30
"4. John Thompson of	in the county of	. .	40
"5. Caleb White of	in the county of	. . .	15
"6. Andrew Brown of	in the county of	. .	5
"7. Cæsar White of	in the county of	. . .	10
Total shares taken	. . . .		325

Dated the 22nd day of November 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM B. (See §§ 9, 14.)

Form B.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND NOT HAVING A CAPITAL DIVIDED INTO SHARES (u).

Memorandum of association.

1st. The name of the company is "The Mutual London Marine Association, Limited."

(t) The forms in this schedule are given as examples, to be followed as closely as possible. (See § 71.) The cases to which they apply will be found in the sections referred to at the head of each form.

(u) See Companies Act, 1900, § 27.

APPENDIX VI.

Form B.

2nd. The registered office of the company will be situate in England.

3rd. The objects for which the company is established are, "the mutual insurance of ships belonging to members of the company, and the doing all such other things as are incidental or conducive to the attainment of the above objects."

4th. Every member of the company undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding ten pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the county of	Merchant.
"2. John Smith of	in the county of	
"3. Thomas Green of	in the county of	
"4. John Thompson of	in the county of	
"5. Caleb White of	in the county of	
"6. Andrew Brown of	in the county of	
"7. Cæsar White of	in the county of	

Dated the 22nd day of November 1861,

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

ARTICLES OF ASSOCIATION TO ACCOMPANY PRECEDING MEMORANDUM OF ASSOCIATION. (See § 14.)

(1.) The company, for the purpose of registration, is declared to consist of five hundred members.

(2.) The directors hereinafter mentioned may, whenever the business of the association requires it, register an increase of members.

Definition of members.

(3.) Every person shall be deemed to have agreed to become a member of the company who insures any ship or share in a ship in pursuance of the regulations hereinafter contained.

General meetings.

(4.) The first general meeting shall be held at such time, not being more than three months after the incorporation of the company, and at such place, as the directors may determine(*x*).

(5.) Subsequent general meetings shall be held at such time and place as may be prescribed by the company in general meeting;

(*x*) § 12 of the Companies Act, 1900, relating to the statutory meeting, does not apply to companies limited by guarantee.

and if no other time or place is prescribed, a general meeting shall be held on the first Monday in February in every year, at such place as may be determined by the directors.

(6.) The above-mentioned general meetings shall be called ordinary meetings; all other general meetings shall be called extraordinary.

(7.) The directors may, whenever they think fit, and they shall, upon a requisition made in writing by any five or more members, convene an extraordinary general meeting (*y*).

(8.) Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company.

(9.) Upon the receipt of such requisition the directors shall forthwith proceed to convene a general meeting; if they do not proceed to convene the same within twenty-one days from the date of the requisition, the requisitionists, or any other five members, may themselves convene a meeting.

Proceedings at general meetings.

(10.) Seven days' notice at the least, specifying the place, the day, and the hour of meeting, and in the case of special business the general nature of such business, shall be given to the members in manner hereinafter mentioned, or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice by any member shall not invalidate the proceedings at any general meeting.

(11.) All business shall be deemed special that is transacted at an extraordinary meeting, and all that is transacted at an ordinary meeting, with the exception of the consideration of the accounts, balance-sheets, and the ordinary report of the directors.

(12.) No business shall be transacted at any meeting except the declaration of a dividend, unless a quorum of members is present at the commencement of such business; and such quorum shall be ascertained as follows; that is to say, if the members of the company at the time of the meeting do not exceed ten in number, the quorum shall be five; if they exceed ten, there shall be added to the above quorum one for every five additional members up to fifty, and one for every ten additional members after fifty, with this limitation, that no quorum shall in any case exceed thirty.

(13.) If within one hour from the time appointed for the meeting a quorum of members is not present, the meeting, if convened upon the requisition of the members, shall be dissolved: in any other case it shall stand adjourned to the same day in the following week at the same time and place; and if at such adjourned meeting a quorum of members is not present, it shall be adjourned *sine die*.

(14.) The chairman (if any) of the directors shall preside as chairman at every general meeting of the company.

(*y*) *Semble* § 13 of the Companies Act, 1900, does not apply to companies without a share capital.

(15.) If there is no such chairman, or if at any meeting he is not present at the time of holding the same, the members present shall choose some one of their number to be chairman of such meeting.

(16.) The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place; but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

(17.) At any general meeting, unless a poll is demanded by at least five members, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact, without proof of the number or proportion of the votes recorded in favour of or against such resolution.

(18.) If a poll is demanded in manner aforesaid, the same shall be taken in such manner as the chairman directs, and the result of such poll shall be deemed to be the resolution of the company in general meeting.

Votes of members.

(19.) Every member shall have one vote and no more.

(20.) If any member is a lunatic or idiot, he may vote by his committee, curator bonis, or other legal curator.

(21.) No member shall be entitled to vote at any meeting unless all monies due from him to the company have been paid.

(22.) Votes may be given either personally or by proxies: a proxy shall be appointed in writing under the hand of the appointor, or, if such appointor is a corporation, under its common seal.

(23.) No person shall be appointed a proxy who is not a member; and the instrument appointing him shall be deposited at the registered office of the company not less than forty-eight hours before the time of holding the meeting at which he proposes to vote.

(24.) Any instrument appointing a proxy shall be in the following form:—

Company Limited.

I of in the county of being a member of the company limited, hereby appoint of as my proxy, to vote for me and on my behalf at the [ordinary *or* extraordinary, *as the case may be*] general meeting of the company to be held on the day of , and at any adjournment thereof to be held on the day of next [*or*, at any meeting of the company that may be held in the year].

As witness my hand, this day of .

Signed by the said in the presence of .

Directors.

(25.) The number of the directors, and the names of the first directors, shall be determined by the subscribers of the memorandum of association.

(26.) Until directors are appointed, the subscribers of the

memorandum of association shall for all the purposes of this Act be deemed to be directors.

Powers of directors.

(27.) The business of the company shall be managed by the directors, who may exercise all such powers of the company as are not hereby required to be exercised by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

Election of directors.

(28.) The directors shall be elected annually by the company in general meeting.

Business of company.

[*Here insert rules as to mode in which business of insurance is to be conducted.*]

Accounts (*z*).

(29.) The accounts of the company shall be audited by a committee of five members, to be called the audit committee.

(30.) The first audit committee shall be nominated by the directors out of the body of members.

(31.) Subsequent audit committees shall be nominated by the members at the ordinary general meeting in each year.

(32.) The audit committee shall be supplied with a copy of the balance-sheet, and it shall be their duty to examine the same with the accounts and vouchers relating thereto.

(33.) The audit committee shall have a list delivered to them of all books kept by the company, and they shall at all reasonable times have access to the books and accounts of the company: they may, at the expense of the company, employ accountants or other persons to assist them in investigating such accounts, and they may in relation to such accounts examine the directors or any other officer of the company.

(34.) The audit committee shall make a report to the members upon the balance-sheet and accounts; and in every such report they shall state whether in their opinion the balance-sheet is a full and fair balance-sheet, containing the particulars required by these regulations of the company, and properly drawn up so as to exhibit a true and correct view of the state of the company's affairs, and, in case they have called for explanation or information from the directors, whether such explanations or information have been given by the directors, and whether they have been satisfactory; and such report shall be read, together with the report of the directors, at the ordinary meeting.

Notices.

(35.) A notice may be served by the company upon any member either personally, or by sending it through the post in a

(*z*) *Qu.* whether the provisions of the Companies Act, 1900, relating to audit apply except to companies having a share capital, see the reference to shareholders in §§ 21 (4) and 23 of that Act.

APPENDIX VI.

Form B.

prepaid letter addressed to such member at his registered place of abode.

(36.) Any notice, if served by post, shall be deemed to have been served at the time when the letter containing the same would be delivered in the ordinary course of the post; and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed, and put into the post office.

Winding up.

(37.) The company shall be wound up voluntarily whenever an extraordinary resolution, as defined by the Companies Act, 1862, is passed, requiring the company to be wound up voluntarily.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the county of	Merchant.
"2. John Smith of	in the county of	
"3. Thomas Green of	in the county of	
"4. John Thompson of	in the county of	
"5. Caleb White of	in the county of	
"6. Andrew Brown of	in the county of	
"7. Cæsar White of	in the county of	

Dated the 22nd day of November, 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM C. (See §§ 9 & 14.)

Form C.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF A COMPANY LIMITED BY GUARANTEE, AND HAVING A CAPITAL DIVIDED INTO SHARES (*a*).

Memorandum of association (*a*).

1st. The name of the company is, "The Highland Hotel Company, Limited."

2nd. The registered office of the company will be situate in Scotland.

3rd. The objects for which the company is established are "the facilitating travelling in the Highlands of Scotland, by providing hotels and conveyances by sea and by land for the accommodation of travellers, and the doing all such other things as are incidental or conducive to the attainment of the above object."

4th. Every member of the company undertakes to contribute to the assets of the company in the event of the same being wound up during the time that he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and the costs, charges, and expenses of winding up the same, and for the adjustment of the rights of the contributories amongst themselves, such amount as may be required not exceeding twenty pounds.

WE, the several persons whose names and addresses are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

(*a*) See now as to the share capital, Companies Act, 1900, § 27.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of in the county of Merchant.
"2. John Smith of in the county of
"3. Thomas Green of in the county of
"4. John Thompson of in the county of
"5. Caleb White of in the county of
"6. Andrew Brown of in the county of
"7. Cæsar White of in the county of

Dated the 22nd day of November 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

Articles of association to accompany preceding memorandum of association.
(See § 14.)

1. The capital of the company shall consist of five hundred thousand pounds, divided into five thousand shares of one hundred pounds each (*aa*).

2. The directors may, with the sanction of the company in general meeting, reduce the amount of shares.

3. The directors may, with the sanction of the company in general meeting, cancel any shares belonging to the company.

4. All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company.

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			Number of Shares taken by each Subscriber.
"1. John Jones of	in the county of	Merchant	200
"2. John Smith of	in the county of	. .	25
"3. Thomas Green of	in the county of	. .	30
"4. John Thompson of	in the county of	. .	40
"5. Caleb White of	in the county of	. .	15
"6. Andrew Brown of	in the county of	. .	5
"7. Cæsar White of	in the county of	. .	10
Total shares taken			325

Dated the 22nd day of November 1861.

Witness to the above signatures,

A. B., No. 13, Hute Street, Clerkenwell, Middlesex.

FORM D. (See §§ 10, 14.)

Form D.

MEMORANDUM AND ARTICLES OF ASSOCIATION OF AN UNLIMITED COMPANY, HAVING A CAPITAL DIVIDED INTO SHARES.

Memorandum of association.

1st. The name of the company is "The Patent Stereotype Company."

2nd. The registered office of the company will be situate in England.

(*aa*) Now to be stated in the memorandum of association, see Comp. Act, 1900, § 27.

APPENDIX VI.
Form D.

3rd. The objects for which the company is established are "the working of a patent method of founding and casting stereotype plates, of which method John Smith, of London, is the sole patentee."

WE, the several persons whose names are subscribed, are desirous of being formed into a company, in pursuance of this memorandum of association.

Names, Addresses, and Descriptions of Subscribers.

"1. John Jones of	in the county of	Merchant.
"2. John Smith of	in the county of	
"3. Thomas Green of	in the county of	
"4. John Thompson of	in the county of	
"5. Caleb White of	in the county of	
"6. Andrew Brown of	in the county of	
"7. Abel Brown of	in the county of	

Dated 22nd day of November 1861.
Witness to the above signatures,
A. B., No. 20, Bond Street, Middlesex.

Articles of association to accompany the preceding memorandum of association.
(See § 14.)

Capital of the Company.

The capital of the company is two thousand pounds, divided into twenty shares of one hundred pounds each.

Application of Table A.

All the articles of Table A. shall be deemed to be incorporated with these articles, and to apply to the company (*b*).

WE, the several persons whose names and addresses are subscribed, agree to take the number of shares in the capital of the company set opposite our respective names.

Names, Addresses, and Descriptions of Subscribers.			Number of Shares taken by Subscribers.
"1. John Jones of	in the county of	Merchant	1
"2. John Smith of	in the county of	. .	5
"3. Thomas Green of	in the county of	. .	2
"4. John Thompson of	in the county of	. .	2
"5. Caleb White of	in the county of	. .	3
"6. Andrew Brown of	in the county of	. .	4
"7. Abel Brown of	in the county of	. .	1
Total shares taken			18

Dated the 22nd day of November 1861.
Witness to the above signatures,
A. B., No. 20, Bond Street, Middlesex.

(*b*) The Companies Act, 1900, § 12, does not apply to unlimited companies.

No. of Certificate

THE COMPANIES ACTS, 1862 TO 1900.

FORM E.

As altered by the Board of Trade, pursuant to § 71 of the Companies Act, 1862 (c).

A 5s. Companies' Registration Fee Stamp must be *impressed* here.

SUMMARY OF CAPITAL AND SHARES

of the Company, Limited, made up to the day of 19 (being the fourteenth day succeeding the day of 19 , when the First Ordinary General Meeting in the year was held).

Nominal Capital, £ Divided into* { Shares of £* } each.

Total Number of Shares taken up to the day of 19 (which number must agree with the total shown in the list, as held by existing members)* ... ...

Number of Shares issued subject to payment wholly in cash ...

Number of Shares issued as fully paid up otherwise than for cash

Number of Shares issued as partly paid up to the extent of per share otherwise than for cash ... ...

‡There has been called up on each of Shares ... ... £

" " " " ... ... £

" " " " ... ... £

§Total amount of Calls received, including payments on application and allotment ... ... £

Total amount (if any) agreed to be considered as paid on Shares which have been issued as fully paid (otherwise than in cash) ... ... £

Total amount (if any) agreed to be considered as paid on Shares which have been issued as partly paid up to the extent of per Share ... ... £

Total amount of Calls unpaid ... ... £

Total amount (if any) paid on || Shares forfeited ... £

Total amount of debt due from the Company in respect of all mortgages and charges which require registration under the Companies Act, 1900, or which would require such registration if created after the commencement of that Act £

NOTE.—A list of the names and addresses of the Directors must follow the list of Members. Banking Companies must also add a list of all their places of business.

* Where there are Shares of different kinds or amounts (*e.g.*, Preference and Ordinary, or £10 and £5) state the numbers and nominal values separately.

‡ Where various amounts have been called, or there are Shares of different kinds, state them separately.

§ Include what has been received on forfeited, as well as on existing, Shares.

|| State the Aggregate number of Shares forfeited (if any).

☞ The return must be signed, at the End, by the Manager or Secretary of the Company.

Presented for filing by

(c) This form was substituted for the form in the Order of the Board of Trade of the 28th December, 1900, printed *infra*, by an order of the Board of Trade of 15th August, 1901, also printed *infra*. See, too, Forms No. 6B and No. 9 in the former Order. And for additional particulars when shares have been converted into stock, see Comp. Act, 1862, § 29; when share warrants have been issued, see Comp. Act, 1867, § 32; and when a portion of the paid-up capital has been returned, see Comp. Act, 1880, § 6.

LIST of Persons holding Shares in the COMPANY, Limited, on the day of 190 .
and of Persons who have held shares therein at any time since the date of the last Return, showing their Names and Addresses, and an Account of the Shares so held.

Folio in Register Ledger, containing Particulars.	Names, Addresses, and Occupations.				Account of Shares.					Remarks.
	Surname.	Christian Name.	Address.	Occupation.	* Number of Shares held by existing Members at date of Return. †	‡ Particulars of Shares Transferred since the date of the last Return by persons who are still Members.		‡ Particulars of Shares Transferred since the date of the last Return by persons who have ceased to be Members.		
						Number.†	Date of Registration of Transfer.	Number.†	Date of Registration of Transfer.	
									(*Signature*) (*Officer*)	

* The aggregate Number of Shares held, and not the Distinctive Numbers, is to be stated, and the column must be added up throughout, so as to make one total to agree with that stated in the Summary to have been taken up.

† When the Shares are of different classes these columns may be sub-divided so that the number of each class held, or transferred, may be shown separately

‡ The date of Registration of each Transfer should be given as well as the Number of Shares transferred on each date. The particulars should be placed opposite the name of the Transferor, and not opposite that of the Transferee, but the name of the Transferee may be inserted in the "*Remarks*" column, immediately opposite the particulars of each Transfer.

FORM F. (See § 21.)

LICENCE TO HOLD LANDS.

The lords of the committee of privy council appointed for the consideration of matters relating to trade and foreign plantations hereby license the Association, Limited, to hold the lands hereunder described [*insert description of lands*]. The conditions of this licence are [*insert conditions, if any*].

THIRD SCHEDULE. (See § 205.)

FIRST PART.

Acts repealed.

Date and Chapter of Act.	Title of Act.
21 & 22 Geo. 3, c. 46 (Parliament of Ireland)	An Act to promote Trade and Manufactures by regulating and encouraging partnerships.
7 & 8 Vict. c. 110	An Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies.
7 & 8 Vict. c. 111	An Act for facilitating the winding up the Affairs of Joint-Stock Companies unable to meet their pecuniary Engagements.
7 & 8 Vict. c. 113	An Act to Regulate Joint-Stock Banks in England.
8 & 9 Vict. c. 98	An Act for facilitating the winding up the Affairs of Joint-Stock Companies in Ireland unable to meet their pecuniary Engagements.
9 & 10 Vict. c. 28	An Act to facilitate the Dissolution of certain Railway Companies.
9 & 10 Vict. c. 75	An Act to Regulate Joint-Stock Banks in Scotland and Ireland.
10 & 11 Vict. c. 78	An Act to amend an Act for the Registration, Incorporation, and Regulation of Joint-Stock Companies.
11 & 12 Vict. c. 45	An Act to amend the Acts for facilitating the winding up the Affairs of Joint-Stock Companies unable to meet their pecuniary Engagements, and also to facilitate the Dissolution and winding up of Joint-Stock Companies and other Partnerships.
12 & 13 Vict. c. 108	An Act to amend the Joint-Stock Companies Winding-up Act, 1848.
19 & 20 Vict. c. 47	An Act for the Incorporation and Regulation of Joint-Stock Companies and other Associations.
20 & 21 Vict. c. 14	An Act to amend the Joint-Stock Companies Act, 1856.
20 & 21 Vict. c. 49	An Act to amend the Law relating to Banking Companies.
20 & 21 Vict. c. 78	An Act to amend the Act Seven and Eight Victoria, Chapter One hundred and eleven, for facilitating the winding up the Affairs of Joint-Stock Companies unable to meet their pecuniary Engagements, and also the Joint-Stock Companies Winding-up Acts, 1848 and 1849.
20 & 21 Vict. c. 80	An Act to amend the Joint-Stock Companies Act, 1856.
21 & 22 Vict. c. 60	An Act to amend the Joint-Stock Companies Acts, 1856 and 1857, and the Joint-Stock Banking Companies Act, 1857.
21 & 22 Vict. c. 91	An Act to enable Joint-Stock Banking Companies to be formed on the Principle of Limited Liability.

APPENDIX VI.

SECOND PART (see § 205) (*d*).

7 & 8 VICT. c. 113, s. 47.

Existing companies to have the powers of suing and being sued.

Every company of more than six persons established on the sixth day of May one thousand eight hundred and forty-four, for the purpose of carrying on the trade or business of bankers within the distance of sixty-five miles from London, and not within the provisions of the Act passed

Note on banking companies. [See also *ante*, pp. 186—187.]

(*d*) The explanation of the Second Part of the Third Schedule to the foregoing statute is as follows:—

The 39 & 40 Geo. 3, c. 28, rendered all banking companies of more than six persons illegal, the Bank of England alone being excepted.

The 7 Geo. 4, c. 46, rendered banking companies of more than six persons legal, provided they did not carry on business within 65 miles of London. The same Act also empowered the banking companies thus legalised to sue and be sued by public officers, upon certain conditions.

The 3 & 4 Will. 4, c. 98, enabled banking companies of more than six persons to carry on business within 65 miles of London, subject to certain restrictions; but neither this Act nor any other, prior to the 7 & 8 Vict., extended to these companies the privilege of suing and being sued by public officers, which privilege was enjoyed under 7 Geo. 4, c. 46, by banking companies carrying on business more than 65 miles from London.

The 7 & 8 Vict. c. 113, § 47, which is above preserved from repeal, conferred the privilege in question upon banking companies of more than six members carrying on business within 65 miles of London, and established before the 6th of May, 1844.

The same Act (7 & 8 Vict. c. 113) prohibited the formation after the 6th of May, 1844, of banking companies of more than six persons, save under its provisions (§ 1). This Act also authorised banking companies of more than six persons formed before the 6th of May, 1844, to obtain charters of incorporation, and so bring themselves within the provisions of the Act (§ 45). Once within its provisions by incorporation, the privilege of suing and being sued by public officers would, of course, be unnecessary; and this accounts for the occurrence in the 47th section of 7 & 8 Vict. c. 113, of the words "and not within the provisions of this Act."

With respect to the 20 & 21 Vict. c. 49, it must be borne in mind that when it passed there were three kinds of banking partnerships and companies in existence, viz.:—1. Ordinary banking firms of not more than six members; 2. Banking companies of more than six members formed before the 6th of May, 1844, but not incorporated; and 3. Banking companies of more than six members, which, whether formed before or after the 6th of May, 1844, were incorporated under the provisions of 7 & 8 Vict. c. 113. It must also be borne in mind that prior to the passing of the 20 & 21 Vict. c. 49, the privileges of banking partnerships and companies to issue notes, &c., depended partly upon whether they consisted of more than six members or not, and partly upon the distance from London at which they carried on their business. (See *ante*, p. 186 n.) Such was the state of the law when the Joint-stock Banking Companies Act, 1857, passed. That Act (20 & 21 Vict. c. 49) did four things, viz.: 1. It imperatively required all banking companies formed under 7 & 8 Vict. c. 113, to register (§ 4). 2. It repealed that Act, not only with respect to banking companies formed after the 17th of August, 1857, but also with respect to all companies formed before that time under 7 & 8 Vict. c. 113, as soon as they should have registered as required.

in the session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and thirteen, shall have the same powers and privileges of suing and being sued in the name of any one of the public officers of such co-partnership as the nominal plaintiff, petitioner, or defendant on behalf of such co-partnership, and all judgments, decrees, and orders made and obtained in any such suit may be enforced, in like manner as is provided with respect to such companies carrying on

Note on banking companies.

(See § 12.) 3. It prohibited the formation of banking companies of more than ten members, save under its own provisions (§ 13). 4. It conferred upon banking companies of not more than ten members the privileges previously enjoyed by banking firms of not more than six members (§ 12). This last enactment it is which is preserved from repeal by the Act of 1862.

The above observations will, it is hoped, enable the reader to understand without difficulty the object of saving from repeal the clauses in the second part of the 3rd schedule to the Companies Act, 1862.

A few additional remarks, however, are necessary to explain the varieties of banking companies which may be met with after that Act has come into operation.

Until 1857 banking companies could not be formed by registration, and until the following year they could not be formed with limited liability, except by virtue of some special Act of Parliament or Royal charter. In 1857, however, an Act was passed authorising banking companies of more than six members to register (20 & 21 Vict. c. 49); and in 1858 another Act was passed, authorising them to register with limited liability (21 & 22 Vict. c. 91). Companies actually registered under these Acts are made subject to the provisions of the Act of 1862 (see §§ 176, 177), which also authorises the formation of new banking companies of more than six members, with limited or unlimited liability (§ 6). Adding registered banking companies therefore to those which existed before 1857, the result will be as follows:—

1. There may be ordinary banking partnerships of not more than ten members.

2. There may be companies of more than six members formed before the 6th May, 1844, and empowered to sue and be sued by public officers, but not registered.

3. There may be registered companies of more than six members. Companies of this class may be limited or not, and may have been originally formed before or after May, 1844, and if after, then either under 7 & 8 Vict. c. 113, or under the Joint-stock Companies Acts of 1857–1858, or under the Act of 1862. As to the power of a bank registered as unlimited to re-register as limited, see Companies Act, 1879

4. There may, perhaps, be yet another class, viz., companies formed before the 6th of May, 1844, and subsequently incorporated by Royal charter under 7 & 8 Vict. c. 113, § 46, but not registered under any of the later Acts. Such a company might possibly be considered as not having been formed under 7 & 8 Vict. c. 113, within the meaning of 20 & 21 Vict. c. 49, § 4; and, if so, registration under this last Act would not be compulsory, and if not compulsory under that Act, it is not compulsory under the Act of 1862. (See § 209.) If, however, the incorporation of the company by charter be considered as the formation of the company within the meaning of 20 & 21 Vict. c. 49, § 4, then the registration of the company is imperative, and the class under consideration cannot legally exist. The latter view the writer conceives to be correct.

In addition to the above four classes

APPENDIX VI.

the said trade or business at any place in England exceeding the distance of sixty-five miles from London, under the provisions of an Act passed in the seventh year of the reign of King George the Fourth, chapter forty-six, intituled, "An Act for the better regulating co-partnerships of certain bankers in England, and for amending so much of an Act of the thirty-ninth and fortieth years of the reign of His late Majesty King George the Third, intituled 'An Act for establishing an agreement with the governor and company of the Bank of England for advancing the sum of three millions towards the supply for the service of the year one thousand eight hundred,' as relates to the same"; provided, that such first-mentioned company shall make out and deliver from time to time to the commissioners of stamps and taxes the several accounts or returns required by the last-mentioned Act; and all the provisions of the last-recited Act as to such accounts or returns shall be taken to apply to the accounts or returns so made out and delivered by such first-mentioned companies as if they had been originally included in the provisions of the last-recited Act.

20 & 21 Vict. c. 49, part of section 12.

Power to form banking partnerships of ten persons.

Notwithstanding anything contained in any Act passed in the session holden in the seventh and eighth years of the reign of Her present Majesty, chapter one hundred and thirteen, and intituled "An Act to regulate Joint-Stock Banks in England," or in any other Act, it shall be lawful for any number of persons, not exceeding ten, to carry on in partnership the business of banking, in the same manner and upon the same conditions in all respects as any company of not more than six persons could before the passing of this Act have carried on such business.

THE COMPANIES SEALS ACT, 1864.

27 VICT. CAP. 19.

An Act to enable joint-stock companies carrying on business in foreign countries to have official seals to be used in such countries (*e*).

[*13th May*, 1864.]

WHEREAS there have been and may be established in the United Kingdom companies whose business is to be carried on in countries not situate in the United Kingdom, and it is convenient and desirable that investments may be made, and mortgages, conveyances, and leases taken, and contracts and engagements entered into, on behalf of the Company, in such countries, in the name of the company: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as "the Companies Seals Act, 1864."

there, of course, may be banking companies formed under special Acts or charters of their own.

With reference to Irish banks, and as to how far the Irish Act, 33 Geo. 2, c. 14, is repealed by the imperial Act, 6 Geo. 4, c. 42, see *O'Flaherty* v. *McDowell*, 6 H. L. C. 142, and *Copland* v. *Davis*, L. R. 5 H. L. 358.

(*e*) See *ante*, pp. 277, 278.

2. Any company, under "The Companies Act, 1862," whose objects require or comprise the transaction of business, as hereinbefore mentioned, in foreign countries, may cause to be prepared an official seal for and to be used in any place, district, or territory situate out of the United Kingdom in which the business of the company shall be carried on, and every such official seal may and shall be a fac-simile of or as nearly as practicable a fac-simile of the common seal of the company, with the exception that on the face thereof shall be inscribed the name of each and every place, district, or territory in and for which it is to be used: provided that it shall be lawful for any such company as aforesaid from time to time to break up and renew any official seal or seals, and to vary the limits within which it is intended to be used.

Power to companies to have an official seal.

3. Every company having or using any such official seal as is authorised by this Act may from time to time, by any instrument or instruments in writing under the common seal of the company, empower any agent or agents specially appointed for the purpose, or any local agent, board, committee, manager, or commissioner appointed under the provisions of the articles of association of such company, in any place, district, or territory situate out of the United Kingdom where the business of the company shall for the time being be carried on, to affix such official seal to any deed, contract, or other instrument to which the company is or shall be made a party in such place, district, or territory, and no other order of the company or the board of directors thereof shall be necessary to authorise any such seal to be affixed to any deed, contract, or other instrument.

Power to companies to appoint agents abroad to affix seals.

4. Every power granted under the last preceding section shall, as between the company, their successors and assigns, on the one hand, and the person or persons dealing with the agent or agents, board, committee, manager, or commissioner named in the instrument conferring the power, and all parties claiming through or under such person or persons, on the other hand, continue in force during the period, if any, mentioned in the instrument conferring the power, or if no power be there mentioned then until notice of the revocation or determination of the power shall have been given to such person or persons as aforesaid.

As to the duration of powers granted under sect. 3 of this Act.

5. Whenever any such official seal as aforesaid shall be affixed to any document, the person affixing the same shall, by writing under his hand and written on the document to which the seal may have been affixed, certify the date when and the place where the same was affixed; and any document to which any such seal shall have been duly affixed within the district or territory or place the name whereof is inscribed on such seal shall bind the company in the same way and to the same extent and have the same force and effect as if it had been duly sealed with the common seal of the company.

Person affixing seal to document to certify the date when so affixed.

6. The powers given by this Act shall be exercised by such companies only as are or shall be expressly authorised to exercise the same by their articles of association, or a special resolution passed according to the provisions of "The Companies Act, 1862" (*ee*), and shall be exercised by such companies subject to any directions or restrictions in their articles of association or the special resolutions contained.

Companies not to exercise powers of Act unless authorised.

7. Nothing in this Act contained shall operate to repeal the provisions of the fifty-fifth section of "The Companies Act, 1862," but such section shall continue in force, and all acts done or to be done thereunder shall be as valid and effectual as if this Act had not been passed.

Section 55 of 25 & 26 Vict. c. 89, not repealed.

(*ee*) § 51.

THE COMPANIES ACT, 1867.

30 & 31 VICT. CAP. 131.

An Act to amend "The Companies Act, 1862."

[20*th August*, 1867.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Preliminary.

Short title.

1. This Act may be cited for all purposes as "The Companies Act, 1867."

Act to be construed as one with 25 & 26 Vict. c. 89.

2. The Companies Act, 1862, is hereinafter referred to as "the principal Act;" and the principal Act and this Act are hereinafter distinguished as and may be cited for all purposes as "The Companies Acts, 1862 and 1867;" and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the principal Act; and the expression "this Act" in the principal Act, and any expression referring to the principal Act which occurs in any Act or other document, shall be construed to mean the principal Act as amended by this Act.

Commencement of Act.

3. This Act shall come into force on the first day of September one thousand eight hundred and sixty-seven, which date is hereinafter referred to as the commencement of this Act.

Unlimited liability of directors.

Company may have directors with unlimited liability.

4. Where after the commencement of this Act a company is formed as a limited company under the principal Act, the liability of the directors or managers of such company, or the managing director, may, if so provided by the memorandum of association, be unlimited.

Liability of directors, past and present, where liability is unlimited.

5. The following modifications shall be made in the thirty-eighth section of the principal Act with respect to the contributions to be required in the event of the winding up of a limited company under the principal Act, from any director or manager whose liability is, in pursuance of this Act, unlimited:

(1.) Subject to the provisions hereinafter contained, any such director or manager, whether past or present, shall, in addition to his liability (if any) to contribute as an ordinary member, be liable to contribute as if he were at the date of the commencement of such winding up a member of an unlimited company:

(2.) No contribution required from any past director or manager who has ceased to hold such office for a period of one year or upwards prior to the commencement of the winding up shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:

(3.) No contribution required from any past director or manager in respect of any debt or liability of the company contracted after the time at which he ceased to hold such office shall exceed the amount (if any) which he is liable to contribute as an ordinary member of the company:

(4.) Subject to the provisions contained in the regulations of the

company, no contribution required from any director or manager shall exceed the amount (if any) which he is liable to contribute as an ordinary member, unless the Court deems it necessary to require such contribution in order to satisfy the debts and liabilities of the company, and the costs, charges, and expenses of the winding up.

Director with unlimited liability may have set-off as under sect. 101 of 25 & 46 Vict. c. 89.

6. In the event of the winding up of any limited company, the Court, if it think fit, may make to any director or manager of such company whose liability is unlimited the same allowance by way of set-off as under the one hundred and first section of the principal Act it may make to a contributory where the company is not limited.

Notice to be given to director on his election that his liability will be unlimited.

7. In any limited company in which, in pursuance of this Act, the liability of a director or manager is unlimited, the directors or managers of the company (if any), and the member who proposes any person for election or appointment to such office, shall add to such proposal a statement that the liability of the person holding such office will be unlimited; and the promoters, directors, managers, and secretary (if any) of such company, or one of them, shall, before such person accepts such office or acts therein, give him notice in writing that his liability will be unlimited.

Penalty for neglect to give notice. Liability not affected by neglect.

If any director, manager, or proposer make default in adding such statement, or if any promoter, director, manager, or secretary make default in giving such notice, he shall be liable to a penalty not exceeding one hundred pounds (*f*), and shall also be liable for any damage which the person so elected or appointed may sustain from such default; but the liability of the person elected or appointed shall not be affected by such default.

Existing limited companies may, by special resolutions, make liability of directors unlimited.

8. Any limited company under the principal Act, whether formed before or after the commencement of this Act, may, by a special resolution, if authorised so to do by its regulations, as originally framed or as altered by special resolution, from time to time modify the conditions contained in its memorandum of association so far as to render unlimited the liability of its directors or managers, or of the managing director; and such special resolution shall be of the same validity as if it had been originally contained in the memorandum of association, and a copy thereof shall be embodied in or annexed to every copy of the memorandum of association which is issued after the passing of the resolution; and any default in this respect shall be deemed to be a default in complying with the provisions of the fifty-fourth section of the principal Act, and shall be punished accordingly (*ff*).

Reduction of capital and shares (*g*).

Power to company to reduce capital, by special resolution and order of Court registered by registrar.

9. Any company limited by shares may, by special resolution, so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations, as originally framed or as altered by special resolution, as to reduce its capital; but no such resolution for reducing the capital of any company shall come into operation until an order of the Court is registered by the registrar of joint-stock companies, as is hereinafter mentioned.

(*f*) As to penalties, see Act of 1862, § 65.

(*ff*) See, as to special resolutions, Act of 1862, § 51, and as to altering the memorandum, ib. § 12.

(*g*) See Ord. of 1868, rules 2 *et seq.*; and Comp. Act, 1877, §§ 2 to 5; and Comp. Act, 1880; and *ante*, pp. 556 *et seq.*

APPENDIX VI.

Company to add "and reduced" to its name for a limited period.

10. The company shall after the date of the passing of any special resolution for reducing its capital add to its name, until such date as the Court may fix, the words "and reduced," as the last words in its name; and those words shall, until such date, be deemed to be part of the name of the company within the meaning of the principal Act.

Company to apply to the Court for an order confirming reduction, which may be made as herein provided.

11. A company which has passed a special resolution for reducing its capital may apply to the Court by petition for an order confirming the reduction; and on the hearing of the petition the Court, if satisfied that with respect to every creditor of the company who under the provisions of this Act is entitled to object to the reduction, either his consent to the reduction has been obtained, or his debt or claim has been discharged or has determined, or has been secured as hereinafter provided, may make an order confirming the reduction on such terms and subject to such conditions as it deems fit.

Definition of the Court.

12. The expression "the Court" shall in this Act mean the Court which has jurisdiction to make an order for winding up the petitioning company (*h*); and the eighty-first and eighty-third sections of the principal Act shall be construed as if the term "winding up" in those sections included proceedings under this Act; and the Court may in any proceedings under this Act make such order as to costs as it deems fit.

[Costs.]

Creditors entitled to prove in winding up may object to reduction.

13. Where a company proposes to reduce its capital, every creditor of the company who at the date fixed by the Court is entitled to any debt or claim which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, shall be entitled to object to the proposed reduction, and to be entered in the list of creditors who are so entitled to object.

List of objecting creditors to be settled by the Court.

The Court shall settle a list of such creditors, and for that purpose shall ascertain as far as possible without requiring an application from any creditor the names of such creditors and the nature and amount of their debts or claims, and may publish notices fixing a certain day or days within which creditors of the company who are not entered on the list are to claim to be so entered or to be excluded from the right of objecting to the proposed reduction (*i*).

Court may dispense with consent of creditor on security being given for his debt.

14. Where a creditor whose name is entered on the list of creditors, and whose debt or claim is not discharged or determined, does not consent to the proposed reduction, the Court may (if it think fit) dispense with such consent on the company securing the payment of the debt or claim of such creditor by setting apart and appropriating, in such manner as the Court may direct, a sum of such amount as is hereinafter mentioned; (that is to say,)

(1.) If the full amount of the debt or claim of the creditor is admitted by the company, or, though not admitted, is such as the company are willing to set apart and appropriate, then the full amount of the debt or claim shall be set apart and appropriated.

(2.) If the full amount of the debt or claim of the creditor is not

(*h*) See in England and Wales, the Companies Winding-up Act, 1890, § 1, and *ante*, pp. 828 *et seq.* The jurisdiction of the High Court can be exercised either by a judge of the Chancery Division or the judge to whom the winding-up business is assigned. *Ocean Steamship Co.* [1893], 2 Ch. 666, and *ante*, p. 557.

(*i*) The first part of this section down "to debts or claims" is imperative, the remainder directory. See *Re Lamson Store, &c., Co.* [1895], 2 Ch. 726.

admitted by the company, and is not such as the company are willing to set apart and appropriate, or if the amount is contingent or not ascertained, then the Court may, if it think fit, inquire into and adjudicate upon the validity of such debt or claim, and the amount for which the company may be liable in respect thereof, in the same manner as if the company were being wound up by the Court, and the amount fixed by the Court on such inquiry and adjudication shall be set apart and appropriated.

Order confirming reduction and minute showing certain particulars as to capital as altered to be registered.

15. The registrar of joint-stock companies, upon the production to him of an order of the Court confirming the reduction of the capital of a company, and the delivery to him of a copy of the order, and of a minute (approved by the Court), showing with respect to the capital of the company, as altered by the order, the amount of such capital, the number of shares in which it is to be divided, and the amount of each share, shall register the order and minute, and on the registration the special resolution confirmed by the order so registered shall take effect.

Notice of such registration shall be published in such manner as the Court may direct.

The registrar shall certify under his hand the registration of the order and minute, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to the reduction of capital have been complied with, and that the capital of the company is such as is stated in the minute (*j*).

Minute to form part of memorandum of association and members to be liable only for difference between amounts paid on shares and amounts of shares as fixed by minute.

16. The minute when registered shall be deemed to be substituted for the corresponding part of the memorandum of association of the company, and shall be of the same validity and subject to the same alterations as if it had been originally contained in the memorandum of association; and, subject as in this Act mentioned, no member of the company, whether past or present, shall be liable in respect of any share to any call or contribution exceeding in amount the difference (if any) between the amount which has been paid on such share and the amount of the share as fixed by the minute.

Saving of rights of creditors who are ignorant of proceedings.

Liability of members to contribute for payment of debts of such creditors.

17. If any creditor who is entitled in respect of any debt or claim to object to the reduction of the capital of a company under this Act, is in consequence of his ignorance of the proceedings taken with a view to such reduction, or of their nature and effect with respect to his claim, not entered on the list of creditors, and after such reduction the company is unable, within the meaning of the eightieth section of the principal Act, to pay to the creditor the amount of such debt or claim, every person who was a member of the company at the date of the registration of the order and minute relating to the reduction of the capital of the company shall be liable to contribute for the payment of such debt or claim an amount not exceeding the amount which he would have been liable to contribute if the company had commenced to be wound up on the day prior to such registration; and on the company being wound up, the Court, on the application of such creditor, and on proof that he was ignorant of the proceedings taken with a view to the reduction, or of their nature and effect with respect to his claim, may, if it think fit, settle a list of such

(*j*) Compare Comp. Memorandum of Association Act, 1890, § 2 (1), and Comp. Act, 1900, § 1.

APPENDIX VI.

contributories accordingly, and make and enforce calls and orders on the contributories settled on such list in the same manner in all respects as if they were ordinary contributories in a winding up; but the provisions of this section shall not affect the rights of the contributories of the company among themselves.

Copy of registered minute to be embodied in every memorandum of association subsequently issued.

18. A minute when registered shall be embodied in every copy of the memorandum of association issued after its registration; and if any company makes default in complying with the provisions of this section it shall incur a penalty not exceeding one pound for each copy in respect of which such default is made, and every director and manager of the company who shall knowingly and wilfully authorise or permit such default shall incur the like penalty (*k*).

Penalty for concealment of name of creditor or misrepresentation of his debt, &c.

19. If any director, manager, or officer of the company wilfully conceals the name of any creditor of the company who is entitled to object to the proposed reduction, or wilfully misrepresents the nature or amount of the debt or claim of any creditor of the company, or if any director or manager of the company aids or abets in or is privy to any such concealment or misrepresentation as aforesaid, every such director, manager, or officer shall be guilty of a misdemeanor.

Power to make rules extended to making rules concerning matters in which jurisdiction is given by this Act.

20. The powers of making rules concerning winding up conferred by the *one hundred and seventieth* (*l*), one hundred and seventy-first, one hundred and seventy-second, and one hundred and seventy-third sections of the principal Act shall respectively extend to making rules concerning matters in which jurisdiction is by this Act given to the Court which has the power of making an order to wind up a company, and until such rules are made the practice of the Court in matters of the same nature shall, so far as the same is applicable, be followed.

Subdivision of shares (*m*).

Shares may be divided into shares of smaller amount.

21. Any company limited by shares may by special resolution so far modify the conditions contained in its memorandum of association, if authorised so to do by its regulations as originally framed or as altered by special resolution, as by subdivision of its existing shares, or any of them, to divide its capital, or any part thereof, into shares of smaller amount than is fixed by its memorandum of association.

Proportion between amounts paid and unpaid on shares to be preserved.

Provided, that in the subdivision of the existing shares the proportion between the amount which is paid and the amount (if any) which is unpaid on each share of reduced amount shall be the same as it was in the case of the existing share or shares from which the share of reduced amount is derived.

Statement of number and amount of shares as altered to be embodied in every memorandum of association subsequently issued.

22. The statement of the number and amount of the shares into which the capital of the company is divided contained in every copy of the memorandum of association issued after the passing of any such special resolution, shall be in accordance with such resolution; and any company which makes default in complying with the provisions of this section shall incur a penalty not exceeding one pound for each copy in respect of which such default is made; and every director and manager of the company who knowingly or wilfully authorises or permits such default shall incur the like penalty (*k*).

(*k*) As to the recovery of penalties, see Act, 1862, § 65.

(*l*) The words in italics were repealed by the Stat. Law Revision Act and Civil Procedure Act, 1881.

(*m*) *Ante*, p. 563.

Associations not for profit.

Special provisions as to associations formed for purposes not of gain.

23. Where any association is about to be formed under the principal Act as a limited company, if it proves to the Board of Trade that it is formed for the purpose of promoting commerce, art, science, religion, charity, or any other useful object, and that it is the intention of such association to apply the profits, if any, or other income of the association in promoting its objects, and to prohibit the payment of any dividend to the members of the association, the Board of Trade may by licence, under the hand of one of the secretaries or assistant secretaries, direct such association to be registered with limited liability, without the addition of the word limited (*n*) to its name; and such association may be registered accordingly, and upon registration shall enjoy all the privileges and be subject to the obligations by this Act imposed on limited companies, with the exceptions that none of the provisions of this Act (*o*) that require a limited company to use the word limited as any part of its name, or to publish its name, or to send a list of its members, directors, or managers to the registrar, shall apply to an association so registered (*p*).

The licence by the Board of Trade may be granted upon such conditions and subject to such regulations as the board think fit to impose; and such conditions and regulations shall be binding on the association, and may, at the option of the said board, be inserted in the memorandum and articles of association, or in both or one of such documents.

Calls upon shares.

Company may have some shares fully paid and others not.

24. Nothing contained in the principal Act (*q*) shall be deemed to prevent any company under that Act, if authorised by its regulations as originally framed or as altered by special resolution, from doing any one or more of the following things; namely,—

(1.) Making arrangements on the issue of shares for a difference between the holders of such shares in the amount of calls to be paid, and in the time of payment of such calls:

(2.) Accepting from any member of the company who assents thereto the whole or a part of the amount remaining unpaid on any share or shares held by him, either in discharge of the amount of a call payable in respect of any other share or shares held by him or without any call having been made:

(3.) Paying dividend in proportion to the amount paid up on each share in cases where a larger amount is paid up on some shares than on others (*r*).

Shares to be issued and held subject to payment of the whole amount in cash, unless it be otherwise determined by a contract registered at or before the issue.

25. *Every share in any company shall be deemed and taken to have been issued and to be held subject to the payment of the whole amount thereof in cash, unless the same shall have been otherwise determined by a contract duly made in writing, and filed with the registrar of joint-stock companies at or before the issue of such shares* (*s*).

(*n*) For an instance see *Incorporated Council of Law Reporting*, 22 Q. B. D. 279.

(*o*) See § 2.

(*p*) See Companies Act, 1862, §§ 8, 9, 26, 41, 42, 45 and 46.

(*q*) See *ante*, p. 476.

(*r*) *Oakbank Oil Co.* v. *Crum*, 8 App. Ca. 65, and *ante*, pp. 606, 635.

(*s*) This section has been repealed by

Transfer of shares.

Transfer may be registered at request of transferor.

26. A company shall on the application of the transferor of any share or interest in the company enter in its register of members the name of the transferee of such share or interest, in the same manner and subject to the same conditions as if the application for such entry were made by the transferee (*t*).

Share warrants to bearer.

Warrants for fully paid-up shares or stock may be issued in name of bearer.

27. In the case of a company limited by shares the company, if authorised so to do by its regulations as originally framed or as altered by special resolution, and subject to the provisions of such regulations, may, with respect to any share which is fully paid up, or with respect to stock, issue under their common seal a warrant stating that the bearer of the warrant is entitled to the share or shares or stock therein specified, and may provide, by coupons or otherwise, for the payment of the future dividends on the share or shares or stock included in such warrant, hereinafter referred to as a share warrant.

Effect of share warrants.

28. A share warrant shall entitle the bearer of such warrant to the shares or stock specified in it, and such shares or stock may be transferred by the delivery of the share warrant (*tt*).

Transfer of shares by delivery.

Bearer of a share warrant may be entered in the register of members on delivering up the warrant for cancellation.

29. The bearer of a share warrant shall, subject to the regulations of the company, be entitled, on surrendering such warrant for cancellation, to have his name entered as a member in the register of members, and the company shall be responsible for any loss incurred by any person by reason of the company entering in its register of members the name of any bearer of a share warrant in respect of the shares or stock specified therein without the share warrant being surrendered and cancelled.

Regulations of the company may make the bearer of a share warrant a member, but not so as to qualify him as a director in respect of such shares.

30. The bearer of a share warrant may, if the regulations of the company so provide, be deemed to be a member of the company within the meaning of the principal Act, either to the full extent or for such purposes as may be prescribed by the regulations:

Provided, that the bearer of a share warrant shall not be qualified in respect of the shares or stock specified in such warrant for being a director or manager of the company in cases where such a qualification is prescribed by the regulations of the company.

Entries in register where share warrant issued.

31. On the issue of a share warrant in respect of any share or stock the company shall strike out of its register of members the name of the member then entered therein as holding such share or stock as if he had ceased to be a member, and shall enter in the register the following particulars:

(1.) The fact of the issue of the warrant:

(2.) A statement of the shares or stock included in the warrant, distinguishing each share by its number:

(3.) The date of the issue of the warrant:

the Companies Act, 1900. See § 33. See also § 7 of that Act. As to the effect of such repeal, see *ante*, pp. 566, 567. See, too, the Companies Act, 1898, and *ante*, pp. 569 *et seq.*

(*t*) See Act of 1862, §§ 22 and 35, and as to the person to procure the registration of the transfer, see *ante*, p. 679, and for remedy if registrar refuses to register a transfer on the ground that it is improperly stamped, see *Queen* v. *Registrar of Joint-Stock Cos.*, 21 Q. B. D. 131.

(*tt*) See *ante*, pp. 656, 657.

And until the warrant is surrendered the above particulars shall be deemed to be the particulars which are required by the twenty-fifth section of the principal Act to be entered in the register of members of a company; and on the surrender of a warrant the date of such surrender shall be entered as if it were the date at which a person ceased to be a member.

Particulars as to share warrants to be contained in annual summary.

32. After the issue by the company of a share warrant the annual summary required by the twenty-sixth section of the principal Act shall contain the following particulars,—the total amount of shares or stock for which share warrants are outstanding at the date of the summary, and the total amount of share warrants which have been issued and surrendered respectively since the last summary was made, and the number of shares or amount of stock comprised in each warrant.

Stamps on share warrants.

33. There shall be charged on every share warrant a stamp duty of an amount equal to three times the amount of the *ad valorem* stamp duty which would be chargeable on a deed transferring the share or shares or stock specified in the warrant, if the consideration for the transfer were the nominal value of such share or shares or stock (*u*).

Penalties on persons committing forgery in relation to share warrants or coupons, or attempting to defraud by means of forged warrants, &c.

34. Whosoever forges or alters, or offers, utters, disposes of, or puts off, knowing the same to be forged or altered, any share warrant or coupon, or any document purporting to be a share warrant or coupon, issued in pursuance of this Act, or demands or endeavours to obtain or receive any dividend or money payable in respect thereof, by virtue of any such forged or altered share warrant, coupon, or document, purporting as aforesaid, knowing the same to be forged or altered, with intent in any of the cases aforesaid to defraud, shall be guilty of felony, and being convicted thereof shall be liable, *at the discretion of the Court*, to be kept in penal servitude for life *or for any term not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement* (*x*).

Penalties on persons falsely personating owners of shares or share warrants.

35. Whosoever falsely and deceitfully personates any owner of any share or interest of or in any company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or endeavours to obtain any such share or interest, or share warrant or coupon, or receives or endeavours to receive any money due to any such owner, as if such offender were the true and lawful owner, shall be guilty of felony, and being convicted thereof shall be liable, *at the discretion of the Court*, to be kept in penal servitude for life *or for any term not less than five years, or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement* (*x*).

Penalties on persons engraving plates, &c.

36. Whosoever, without lawful authority or excuse, the proof whereof shall be on the party accused, engraves or makes upon any plate, wood, stone, or other material any share warrant or coupon purporting to be a share warrant or coupon issued or made by any particular company under and in pursuance of this Act, or to be a blank share warrant or coupon issued or made as aforesaid, or to be a part of such a share warrant or coupon, or uses any such plate, wood, stone, or other material for the making or printing any such share warrant or coupon, or any such blank

(*u*) A penalty of 50*l.* is imposed upon the company, and its managing director, secretary or principal officer, if this section is not observed by the Stamp Act, 1891, § 107.

(*x*) The words in italics were repealed by the Stat. Law Revision (No. 2 Act, 1893.

share warrant or coupon, or any part thereof respectively, or knowingly has in his custody or possession any such plate, wood, stone, or other material, shall be guilty of felony, and being convicted thereof shall be liable, *at the discretion of the Court*, to be kept in penal servitude for any term not exceeding fourteen years *and not less than five years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement* (*x*).

Contracts (*y*).

Contracts on behalf of companies, how to be made.

37. Contracts on behalf of any company under the principal Act may be made as follows; (that is to say,)

(1.) Any contract which if made between private persons would be by law required to be in writing, and if made according to English law to be under seal, may be made on behalf of the company in writing under the common seal of the company, and such contract may be in the same manner varied or discharged:

(2.) Any contract which if made between private persons would be by law required to be in writing, and signed by the parties to be charged therewith, may be made on behalf of the company in writing signed by any person acting under the express or implied authority of the company, and such contract may in the same manner be varied or discharged:

(3.) Any contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the company by any person acting under the express or implied authority of the company, and such contract may in the same way be varied or discharged:

And all contracts made according to the provisions herein contained shall be effectual in law, and shall be binding upon the company and their successors, and all other parties thereto, their heirs, executors, or administrators, as the case may be.

Prospectus, &c. to specify dates and names of parties to any contract made prior to issue of such prospectus, &c., and otherwise to be deemed fraudulent on part of persons issuing as against persons taking shares on faith thereof.

38. *Every prospectus of a company, and every notice inviting persons to subscribe for shares in any joint-stock company, shall specify the dates and the names of the parties to any contract entered into by the company, or the promoters, directors, or trustees thereof, before the issue of such prospectus or notice, whether subject to adoption by the directors or the company, or otherwise; and any prospectus or notice not specifying the same shall be deemed fraudulent on the part of the promoters, directors, and officers of the company knowingly issuing the same, as regards any person taking shares in the company on the faith of such prospectus, unless he shall have had notice of such contract* (*z*).

Meetings.

Company to hold meeting within four months after registration.

39. *Every company formed under the principal Act after the commencement of this Act shall hold a general meeting within four months after its memorandum of association is registered; and if such meeting is not held the company shall be liable to a penalty not exceeding five pounds a day for every day after*

(*x*) See note (*x*), p. 1353.

(*y*) *Ante*, pp. 269—278.

(*z*) This section was repealed by the Companies Act, 1900, § 33. See now §§ 9 and 10 of that Act. As to the repealed section, see *ante*, pp. 128—130.

the expiration of such four months until the meeting is held; and every director or manager of the company, and every subscriber of the memorandum of association, who knowingly authorises or permits such default, shall be liable to the same penalty (*a*).

Winding up.

Contributory when not qualified to present winding-up petition.

40. No contributory of a company under the principal Act (*b*) shall be capable of presenting a petition for winding up such company unless the members of the company are reduced in number to less than seven, or unless the shares in respect of which he is a contributory, or some of them, either were originally allotted to him or have been held (*c*) by him, and registered in his name, for a period of at least six months during the eighteen months previously to the commencement of the winding up, or have devolved upon him through the death of a former holder:

Provided that where a share has during the whole or any part of the six months been held by or registered in the name of the wife of a contributory either before or after her marriage, or by or in the name of any trustee or trustees for such wife or for the contributory, such share shall for the purposes of this section be deemed to have been held by and registered in the name of the contributory.

41—46. *These sections, which empowered the High Court of Chancery in England to transfer the proceedings in a winding up to a County Court, and contained other provisions incidental thereto, are repealed by the Companies* (*Winding-up*) *Act*, 1890, § 33, *and have been replaced by* §§ 1 *and* 3 *of that Act.*

Saving.

Companies not exempted from second or third provisions of 25 & 26 Vict. c. 89, sect. 196.

47. Nothing in this Act contained shall exempt any company from the second or third (*d*) provisions of the one hundred and ninety-sixth section of the principal Act restraining the alteration of any provision in any Act of Parliament or charter.

THE JOINT STOCK COMPANIES ARRANGEMENT ACT, 1870.

33 & 34 VICT. CAP. 104.

An Act to facilitate compromises and arrangements between creditors and shareholders of joint stock and other companies in liquidation (*e*).

[10*th August*, 1870.]

WHEREAS it is expedient to amend the law relating to the liquidation of joint stock and other companies:

Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as "The Joint Stock Companies Arrangement Act, 1870."

(*a*) Repealed by the Companies Act, 1900, § 33. See in the case of companies limited by shares, § 12 of that Act.

(*b*) See Act of 1862, § 82.

(*c*) See *Wala Wynaad, &c., Co.*, 21 Ch. D. 849, and *ante*, p. 845.

(*d*) *Quære*, third and fourth, see Buckley, ed. 7, p. 629.

(*e*) See *ante*, pp. 986—990.

APPENDIX VI.

Where compromise proposed Court of Chancery may order a meeting of creditors, &c. to decide as to such compromise.

2. Where any compromise or arrangement shall be proposed between a company which is, at the time of the passing of this Act or afterwards, in the course of being wound up, either voluntarily or by or under the supervision of the Court, under the Companies Acts, 1862 and 1867, or either of them, and the creditors of such company, or any class of such creditors (*f*), it shall be lawful for the Court, in addition to any other of its powers, on the application in a summary way of any creditor or the liquidator, to order that a meeting of such creditors or class of creditors shall be summoned in such manner as the Court shall direct, and if a majority in number representing three-fourths in value of such creditors or class of creditors present either in person or by proxy at such meeting shall agree to any arrangement or compromise, such arrangement or compromise shall, if sanctioned by an order of the Court, be binding on all such creditors or class of creditors, as the case may be, and also on the liquidator and contributories of the said company.

Interpretation.

3. The word "company" in this Act shall mean any company liable to be wound up under "The Companies Act, 1862."

Act and Companies Act to be read together.

4. This Act shall be read and construed as part of "The Companies Act, 1862."

THE COMPANIES ACT, 1877.

40 & 41 VICT. CAP. 26.

An Act to amend the Companies Acts of 1862 *and* 1867.

[23*rd July*, 1877.]

[30 & 31 Vict. c. 131.]

Whereas doubts have been entertained whether the power given by the Companies Act, 1867, *to a company of reducing its capital extends to paid-up capital, and it is expedient to remove such doubts* (*g*):

Be it enacted, &c.:

Short title.

1. This Act may be cited for all purposes as the Companies Act, 1877.

Construction of Act.

[25 & 26 Vict. c. 89, and 30 & 31 Vict. c. 131.]

2. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862 and 1867, *and the said Acts and this Act may be referred to as "The Companies Acts*, 1862, 1867, *and* 1877" (*g*).

Construction of "capital" and powers to reduce capital contained in 30 & 31 Vict. c. 131.

3. The word "capital" as used in the Companies Acts, 1867, shall include paid-up capital: and the power to reduce capital conferred by that Act shall include a power to cancel any lost capital, or any capital unrepresented by available assets, or to pay off any capital which may be in excess of the wants of the company; and paid-up capital may be reduced either with or without extinguishing or reducing the liability (if any) remaining on the shares of the company, and to the extent to which such liability is not extinguished or reduced it shall be deemed to be preserved, notwithstanding anything contained in the Companies Act, 1867 (*h*).

Application of provisions of 30 & 31 Vict. c. 131.

4. The provisions of the Companies Act, 1867, as amended by this Act,

(*f*) This section now applies also as between the company and the members, or any class thereof. See Companies Act, 1900, § 24.

(*g*) The words in italics were repealed by the Stat. Law Revision Act, 1894.

(*h*) See *ante*, pp. 556 *et seq.*, Comp. Act, 1867, §§ 9—20, and Comp. Act, 1880.

shall apply to any company reducing its capital in pursuance of this Act and of the Companies Act, 1867, as amended by this Act:

Provided, that where the reduction of the capital of a company does not involve either the diminution of any liability in respect of unpaid capital or the payment to any shareholder of any paid-up capital,—

(1.) The creditors of the company shall not, unless the Court otherwise direct, be entitled to object or required to consent to the reduction; and

(2.) It shall not be necessary before the presentation of the petition for confirming the reduction to add, and the Court may, if it thinks it expedient so to do, dispense altogether with the addition of the words "and reduced," as mentioned in the Companies Act, 1867. [30 & 31 Vict. c. 131.]

In any case that the Court thinks fit so to do, it may require the company to publish in such manner as it thinks fit the reasons for the reduction of its capital or such other information in regard to the reduction of its capital as the Court may think expedient with a view to give proper information to the public in relation to the reduction of its capital by a company, and, if the Court thinks fit, the causes which led to such reduction.

The minute required to be registered in the case of reduction of capital shall show, in addition to the other particulars required by law, the amount (if any) at the date of the registration of the minute proposed to be deemed to have been paid up on each share (*i*).

Power to reduce capital by the cancellation of unissued shares.

5. Any company limited by shares may so far modify the conditions contained in its memorandum of association if authorised so to do by its regulations as originally framed or as altered by special resolution, as to reduce its capital by cancelling any shares which, at the date of the passing of such resolution, have not been taken or agreed to be taken by any person: and the provisions of "The Companies Act, 1867," shall not apply to any reduction of capital made in pursuance of this section.

Reception of certified copies of documents as legal evidence.

6. And whereas it is expedient to make provision for the reception as legal evidence of certificates of incorporation other than the original certificates, and of certified copies of or extracts from any documents filed and registered under the Companies Acts, 1862 to 1867: Be it enacted, that any certificate of the incorporation of any company given by the registrar or by any assistant registrar for the time being shall be received in evidence as if it were the original certificate; and any copy or extract from any of the documents or part of the documents kept and registered at any of the offices for the registration of joint-stock companies in England, Scotland, or Ireland, if duly certified to be a true copy under the hand of the registrar or one of the assistant registrars for the time being, and whom it shall not be necessary to prove to be the registrar or assistant registrar, shall, in all legal proceedings, civil or criminal, and in all cases whatsoever, be received in evidence as of equal validity with the original document. [25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.]

(*i*) For the form of the minute, see cases cited *ante*, p. 561, note (*r*).

THE COMPANIES ACT, 1879.

42 & 43 VICT. CAP. 76.

An Act to amend the law with respect to the liability of members of banking and other joint-stock companies: and for other purposes.

[15*th August*, 1879.]

Be it enacted, &c. (*k*).

Short title.

1. This Act may be cited as the Companies Act, 1879.

Act not to apply to Bank of England.

2. This Act shall not apply to the Bank of England.

Act to be construed with 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.

3. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, and 1877, *and those Acts, together with this Act, may be referred to as the Companies Acts*, 1862 *to* 1879 (*k*).

Registration anew of company.

25 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26. 42 & 43 Vict. c. 76.

4. Subject as in this Act mentioned, any company registered before or after the passing of this Act as an unlimited company may register under the Companies Acts, 1862 to 1879, as a limited company, or any company already registered as a limited company may re-register under the provisions of this Act.

The registration of an unlimited company as a limited company in pursuance of this Act shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII. of the Companies Act, 1862, in the case of a company registering in pursuance of that part.

Reserve capital of company, how provided.

25 & 26 Vict. c. 89.

5. An unlimited company may, by the resolution passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares.

25 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26. 42 & 43 Vict. c. 76.

Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up (*l*).

And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up (*l*).

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up (*l*).

25 & 26 Vict. c. 89, s. 182, repealed, and liability of bank of issue unlimited in respect of notes.

6. Section one hundred and eighty-two of the Companies Act, 1862, is hereby repealed, and in place thereof it is enacted as follows:—A bank of issue registered as a limited company, either before or after the passing of

(*k*) The words in italics are repealed by the Statute Law Revision Act, 1894.

(*l*) See *ante*, pp. 316, 564, and 565.

this Act, shall not be entitled to limited liability in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditor as well as the note-holder.

It shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Audit of accounts of banking companies.

7. (1.) Once at the least in every year the accounts of every banking company registered after the passing of this Act as a limited company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company: Provided that if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance sheet laid before the company in general meeting during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance sheet referred to in the report is a full and fair balance sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company; and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company (*m*).

(*m*) Compare Comp. Act, 1900, §§ 21 to 23, and see *ante*, pp. 615—619, and 621—623.

THE COMPANIES ACT, 1879.

42 & 43 VICT. CAP. 76.

An Act to amend the law with respect to the liability of members of banking and other joint-stock companies: and for other purposes.

[15*th August*, 1879.]

Be it enacted, &c. (*k*).

Short title.

1. This Act may be cited as the Companies Act, 1879.

Act not to apply to Bank of England.

2. This Act shall not apply to the Bank of England.

Act to be construed with 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.

3. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, and 1877, *and those Acts, together with this Act, may be referred to as the Companies Acts*, 1862 to 1879 (*k*).

Registration anew of company.

25 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26. 42 & 43 Vict. c. 76.

4. Subject as in this Act mentioned, any company registered before or after the passing of this Act as an unlimited company may register under the Companies Acts, 1862 to 1879, as a limited company, or any company already registered as a limited company may re-register under the provisions of this Act.

The registration of an unlimited company as a limited company in pursuance of this Act shall not affect or prejudice any debts, liabilities, obligations, or contracts incurred or entered into by, to, with, or on behalf of such company prior to registration, and such debts, liabilities, contracts, and obligations may be enforced in manner provided by Part VII. of the Companies Act, 1862, in the case of a company registering in pursuance of that part.

Reserve capital of company, how provided.

25 & 26 Vict. c. 89.

5. An unlimited company may, by the resolution passed by the members when assenting to registration as a limited company under the Companies Acts, 1862 to 1879, and for the purpose of such registration or otherwise, increase the nominal amount of its capital by increasing the nominal amount of each of its shares.

25 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26. 42 & 43 Vict. c. 76.

Provided always, that no part of such increased capital shall be capable of being called up, except in the event of and for the purposes of the company being wound up (*l*).

And, in cases where no such increase of nominal capital may be resolved upon, an unlimited company may, by such resolution as aforesaid, provide that a portion of its uncalled capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up (*l*).

A limited company may by a special resolution declare that any portion of its capital which has not been already called up shall not be capable of being called up, except in the event of and for the purpose of the company being wound up; and thereupon such portion of capital shall not be capable of being called up, except in the event of and for the purposes of the company being wound up (*l*).

25 & 26 Vict. c. 89, s. 182, repealed, and liability of bank of issue unlimited in respect of notes.

6. Section one hundred and eighty-two of the Companies Act, 1862, is hereby repealed, and in place thereof it is enacted as follows:—A bank of issue registered as a limited company, either before or after the passing of

(*k*) The words in italics are repealed by the Statute Law Revision Act, 1894.

(*l*) See *ante*, pp. 316, 564, and 565.

this Act, shall not be entitled to limited liability in respect of its notes; and the members thereof shall continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company; but in case the general assets of the company are, in the event of the company being wound up, insufficient to satisfy the claims of both the note-holders and the general creditors, then the members, after satisfying the remaining demands of the note-holders, shall be liable to contribute towards payment of the debts of the general creditors a sum equal to the amount received by the note-holders out of the general assets of the company.

For the purposes of this section the expression "the general assets of the company" means the funds available for payment of the general creditor as well as the note-holder.

It shall be lawful for any bank of issue registered as a limited company to make a statement on its notes to the effect that the limited liability does not extend to its notes, and that the members of the company continue liable in respect of its notes in the same manner as if it had been registered as an unlimited company.

Audit of accounts of banking companies.

7. (1.) Once at the least in every year the accounts of every banking company registered after the passing of this Act as a limited company shall be examined by an auditor or auditors, who shall be elected annually by the company in general meeting.

(2.) A director or officer of the company shall not be capable of being elected auditor of such company.

(3.) An auditor on quitting office shall be re-eligible.

(4.) If any casual vacancy occurs in the office of any auditor the surviving auditor or auditors (if any) may act, but if there is no surviving auditor, the directors shall forthwith call an extraordinary general meeting for the purpose of supplying the vacancy or vacancies in the auditorship.

(5.) Every auditor shall have a list delivered to him of all books kept by the company, and shall at all reasonable times have access to the books and accounts of the company; and any auditor may, in relation to such books and accounts, examine the directors or any other officer of the company: Provided that if a banking company has branch banks beyond the limits of Europe, it shall be sufficient if the auditor is allowed access to such copies of and extracts from the books and accounts of any such branch as may have been transmitted to the head office of the banking company in the United Kingdom.

(6.) The auditor or auditors shall make a report to the members on the accounts examined by him or them, and on every balance sheet laid before the company in general meeting during his or their tenure of office; and in every such report shall state whether, in his or their opinion, the balance sheet referred to in the report is a full and fair balance sheet properly drawn up, so as to exhibit a true and correct view of the state of the company's affairs, as shown by the books of the company; and such report shall be read before the company in general meeting.

(7.) The remuneration of the auditor or auditors shall be fixed by the general meeting appointing such auditor or auditors, and shall be paid by the company (*m*).

(*m*) Compare Comp. Act, 1900, §§ 21 to 23, and see *ante*, pp. 615—619, and 621—623.

APPENDIX VI.

Signature of balance sheet.

8. Every balance sheet submitted to the annual or other meeting of the members of every banking company registered after the passing of this Act as a limited company shall be signed by the auditor or auditors, and by the secretary or manager (if any), and by the directors of the company, or three of such directors at the least (*n*).

Application of 25 & 26 Vict. c. 89, 30 & 31 Vict. c. 131, and 40 & 41 Vict. c. 26.

9. On the registration, in pursuance of this Act, of a company which has been already registered, the registrar shall make provision for closing the former registration of the company, and may dispense with the delivery to him of copies of any documents with copies of which he was furnished on the occasion of the original registration of the company; but, save as aforesaid, the registration of such a company shall take place in the same manner and have the same effect as if it were the first registration of that company under the Companies Acts, 1862 to 1879, and as if the provisions of the Acts under which the company was previously registered and regulated had been contained in different Acts of Parliament from those under which the company is registered as a limited company.

25 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26, and 42 & 43 Vict. c. 76.

Privileges of Act available notwithstanding constitution of company.

10. A company authorised to register under this Act may register thereunder and avail itself of the privileges conferred by this Act, notwithstanding any provisions contained in any Act of Parliament, royal charter, deed of settlement, contract of copartnery, cost book, regulations, letters patent, or other instrument constituting or regulating the company.

THE COMPANIES ACT, 1880.

43 VICT. CAP. 19.

An Act to amend the Companies Acts of 1862, 1867, 1877 *and* 1879.

[24*th March*, 1880.]

Be it enacted, &c. (*o*)

Short title.

1. This Act may be cited for all purposes as the Companies Act, 1880.

Construction of Acts. 25 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26. 42 & 43 Vict. c. 76.

2. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, 1877, and 1879, *and the said Acts and this Act may be referred to as the Companies Acts*, 1862 *to* 1880 (*o*):

Accumulated profits may be returned to shareholders in reduction of paid-up capital.

3. When any company has accumulated a sum of undivided profits, which with the consent of the shareholders may be distributed among the shareholders in the form of a dividend or bonus, it shall be lawful for the company, by special resolution, to return the same, or any part thereof, to the shareholders in reduction of the paid-up capital of the company, the unpaid capital being thereby increased by a similar amount. The powers vested in the directors of making calls upon the shareholders in respect of monies unpaid upon their shares shall extend to the amount of the unpaid capital as augmented by such reduction (*p*).

(*n*) Compare the Companies Act, 1900, § 23, and see *ante*, pp. 622, 623.

(*o*) The words in italics were repealed by the Statute Law Revision Act, 1894.

(*p*) See *ante*, pp. 562, 563. It is not necessary for the articles to provide for a reduction of capital. Compare Comp. Act, 1867, §§ 9 and 21, and Comp. Act, 1877, § 3.

4. No such special resolution (*pp*) as aforesaid shall take effect until a memorandum, showing the particulars required by law in the case of a reduction of capital by order of the Court, shall have been produced to and registered by the Registrar of Joint Stock Companies.

No resolution to take effect till particulars have been registered.

5. Upon any reduction of paid-up capital made in pursuance of this Act, it shall be lawful for any shareholder, or for any one or more of several joint shareholders, within one month after the passing of the special resolution (*pp*) for such reduction, to require the company to retain, and the company shall retain accordingly, the whole of the moneys actually paid upon the shares held by such person, either alone or jointly with any other person or persons, and which, in consequence of such reduction, would otherwise be returned to him or them, and thereupon the shares in respect of which the said moneys shall be so retained shall, in regard to the payment of dividends thereon, be deemed to be paid up to the same extent only as the shares on which payment as aforesaid has been accepted by the shareholders in reduction of their paid-up capital, and the company shall invest and keep invested the moneys so retained in such securities authorised for investment by trustees as the company shall determine, and upon the money so invested, or upon so much thereof as from time to time exceeds the amount of calls subsequently made upon the shares in respect of which such moneys shall have been retained, the company shall pay such interest as shall be received by them from time to time on such securities, and the amount so retained and invested shall be held to represent the future calls which may be made to replace the capital so reduced on those shares, whether the amount obtained on sale of the whole or such proportion thereof as represents the amount of any call when made, produces more or less than the amount of such call.

Power to any shareholder within one month after passing of resolution to require company to retain moneys paid upon shares held by such person.

6. From and after such reduction of capital the company shall specify in the annual lists of members, to be made by them in pursuance of the twenty-sixth section of the Companies Act, 1862, the amounts which any of the shareholders of the company shall have required the company to retain, and the company shall have retained accordingly, in pursuance of the fifth section of this Act, and the company shall also specify in the statements of account laid before any general meeting of the company the amount of the undivided profits of the company which shall have been returned to the shareholders in reduction of the paid-up capital of the company under this Act.

Company to specify amounts which shareholders have required them to retain under s. 5; also to specify amounts of profits returned to shareholders. 25 & 26 Vict. c. 89.

7.—(1.) Where the Registrar of Joint Stock Companies has reasonable cause to believe that a company, whether registered before or after the passing of this Act, is not carrying on business or in operation (*q*), he shall send to the company by post a letter inquiring whether the company is carrying on business or in operation.

Power of registrar to strike names of defunct companies off register (*q*).

(2.) If the registrar does not within one month of sending the letter receive any answer thereto, he shall within fourteen days after the expiration of the month send to the company by post a registered letter referring to the first letter, and stating that no answer thereto has been received by the registrar, and that if an answer is not received to the second letter within one month from the date thereof, a notice will be published in the Gazette with a view to striking the name of the company off the register.

(*pp*) See Comp. Act, 1862, § 51.

(*q*) If a company is being wound up, see Companies Act, 1900, § 26. See, too, *ante*, p. 1177.

(3.) If the registrar either receives an answer from the company to the effect that it is not carrying on business or in operation, or does not within one month after sending the second letter receive any answer thereto, the registrar may publish in the Gazette and send to the company a notice that at the expiration of three months from the date of that notice the name of the company mentioned therein will, unless cause is shown to the contrary, be struck off the register and the company will be dissolved.

(4.) At the expiration of the time mentioned in the notice the registrar may, unless cause to the contrary is previously shown by such company, strike the name of such company off the register, and shall publish notice thereof in the Gazette and on the publication in the Gazette of such last-mentioned notice the company whose name is so struck off shall be dissolved: Provided that the liability (if any) of every director, managing officer, and member of the company shall continue and may be enforced as if the company had not been dissolved.

(5.) If any company or member [or creditor] (*r*) thereof feels aggrieved by the name of such company having been struck off the register in pursuance of this section, the company or member [or creditor] (*r*) may apply to the superior Court in which the company is liable to be wound up; and such Court, if satisfied that the company was at the time of the striking off carrying on business or in operation (*s*) [or otherwise] (*ss*) that it is just so to do, may order the name of the company to be restored to the register, and thereupon the company shall be deemed to have continued in existence as if the name thereof had never been struck off; and the Court may by the order give such directions and make such provisions as seem just for placing the company and all other persons in the same position as nearly as may be as if the name of the company had never been struck off.

(6.) A letter or notice authorised or required for the purposes of this section to be sent to a company may be sent by post addressed to the company at its registered office, or, if no office has been registered, addressed to the care of some director or officer of the company, or if there be no director or officer of the company whose name and address are known to the registrar, the letter or notice (in identical form) may be sent to each of the persons who subscribed the memorandum of association, addressed to him at the address mentioned in that memorandum.

(7.) In the execution of his duties under this section the registrar shall conform to any regulations which may be from time to time made by the Board of Trade.

(8.) In this section the Gazette means, as respects companies whose registered office is in England, the "London Gazette;" as respects companies whose registered office is in Scotland, the "Edinburgh Gazette;" and as respects companies whose registered office is in Ireland, the "Dublin Gazette."

(*r*) The words "or creditor" are added pursuant to Comp. Act, 1900, § 26 (2).

(*s*) A company which is carrying on business merely for the purpose of a voluntary winding up is within these words, *Outlay Ass. Soc.*, 34 Ch. D. 479.

(*ss*) The words "or otherwise" were substituted for the word "and" by Comp. Act, 1900, § 26 (2).

THE COMPANIES ACT, 1883.

46 & 47 VICT. CAP. 28.

This Act, which related to preferential payments in the distribution of the assets of a company being wound up, was repealed and replaced as to England by the Preferential Payments in Bankruptcy Act, 1888 (printed *infra*, p. 1368); and as to Ireland by the Preferential Payments in Bankruptcy (Ireland) Act, 1889 (52 & 53 Vict. c. 60), both of which Acts have been amended by the Preferential Payments in Bankruptcy Amendment Act, 1897 (printed *infra*, p. 1397). As to companies working mines in the Stannaries, see the Stannaries Act, 1887, and *ante*, p. 1000.

THE COMPANIES (COLONIAL REGISTERS) ACT, 1883.

46 & 47 VICT. CAP. 30.

An Act to authorise companies registered under the Companies Act, 1862, *to keep local registers of their members in British Colonies.*

[20*th August*, 1883.]

WHEREAS many companies registered under the Companies Act, 1862, carry on business in British colonies, and dealings in their shares are frequent in such colonies, but delay, inconvenience, and expense are occasioned by reason of the absence of any legal provision for keeping local registers of members, and it is expedient that such provisions as this Act contains be made in that behalf:

Be it therefore enacted, &c.:

Short title and construction.

1. This Act may be cited for all purposes as the Companies (Colonial Registers) Act, 1883; and this Act shall, so far as is consistent with the tenor thereof, be construed as one with the Companies Acts, 1862 to 1880, and the said Acts and this Act may be referred to as the Companies Acts, 1862 to 1883.

Definitions.

2. In this Act the term "company" means a company registered under the Companies Act, 1862, and having a capital divided into shares; the term "shares" includes stock; the term "colony" does not include any place within the United Kingdom, the Isle of Man, or the Channel Islands, but includes such territories as may for the time being be vested in her Majesty by virtue of an Act of Parliament for the government of India, and any plantation, territory, or settlement situate elsewhere within her Majesty's dominions.

Power for companies to keep colonial registers.

3.—(1.) Any company whose objects comprise the transaction of business in a colony may, if authorised so to do by its regulations, as originally framed or as altered by special resolution (*t*), cause to be kept in any colony in which it transacts business a branch register or registers of members resident in such colony.

(2.) The company shall give to the registrar of joint-stock companies notice of the situation of the office where any such branch register (in this Act called a colonial register) is kept, and of any change therein, and of the discontinuance of any such office in the event of the same being discontinued.

(3.) A colonial register shall, as regards the particulars entered therein, be deemed to be a part of the company's register of members, and

(*t*) See Comp. Act, 1862, § 51.

shall be *primâ facie* evidence of all particulars entered therein. Any such register shall be kept in the manner provided by the Companies Acts, 1862 to 1880, with this qualification, that the advertisement mentioned in section thirty-three of the Companies Act, 1862, shall be inserted in some newspaper circulating in the district wherein the register to be closed is kept, and that any competent Court in the colony where such register is kept shall be entitled to exercise the same jurisdiction of rectifying the same as is by section thirty-five of the Companies Act, 1862, vested, as respects a register, in England and Ireland in her Majesty's superior Courts of law or equity, and that all offences under section thirty-two of the Companies Act, 1862, may, as regards a colonial register, be prosecuted summarily before any tribunal in the colony where such register is kept having summary criminal jurisdiction.

25 & 26 Vict. c. 89.

(4.) The company shall transmit to its registered office a copy of every entry in its colonial register or registers as soon as may be after such entry is made, and the company shall cause to be kept at its registered office, duly entered up from time to time, a duplicate or duplicates of its colonial register or registers. The provisions of section thirty-two of the Companies Act, 1862, shall apply to every such duplicate, and every such duplicate shall, for all the purposes of the Companies Acts, 1862 to 1880, be deemed to be part of the register of members of the company.

(5.) Subject to the provisions of this Act with respect to the duplicate register, the shares registered in a colonial register shall be distinguished from the shares registered in the principal register, and no transaction with respect to any shares registered in a colonial register shall, during the continuance of the registration of such shares in such colonial register, be registered in any other register.

(6.) The company may discontinue to keep any colonial register, and thereupon all entries in that register shall be transferred to some other colonial register kept by the company in the same colony, or to the register of members kept at the registered office of the company.

(7.) In relation to stamp duties the following provisions shall have effect:—

(a.) An instrument of transfer of a share registered in a colonial register under this Act shall be deemed to be a transfer of property situated out of the United Kingdom, and unless executed in any part of the United Kingdom shall be exempt from British stamp duty.

(b.) Upon the death of a member registered in a colonial register under this Act, the share or other interest of the deceased member shall for the purposes of this Act so far as relates to British duties be deemed to be part of his estate and effects situated in the United Kingdom for or in respect of which probate or letters of administration is or are to be granted, or whereof an inventory is to be exhibited and recorded in like manner as if he were registered in the register of members kept at the registered office of the company (*u*).

(*u*) Shares in a colonial register belonging to a person who dies domiciled elsewhere than in the United Kingdom, are not, so far as relates to British duties, part of his estate or effects in the United Kingdom for the purposes of probate. See Revenue Act, 1889, 52 & 53 Vict. c. 42, § 18.

(8.) Subject to the provisions of this Act, any company may, by its regulations as originally framed, or as altered by special resolution (*v*), make such provisions as it may think fit respecting the keeping of colonial registers.

THE COMPANIES ACT, 1886.

49 VICT. CAP. 23.

An Act to amend the Companies Acts of 1862, 1867, 1870, 1877, 1879, 1880, *and* 1883. [*4th June*, 1886.]

WHEREAS it has become expedient to amend the provisions of the Companies Act, 1862, and of the other Acts amending the same hereinafter recited, in so far as the said provisions relate to the liquidation of companies in Scotland:

25 & 26 Vict. c. 89.

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited for all purposes as the Companies Act, 1886.

Construction of Acts.

2. This Act shall, so far as consistent with the tenor thereof, be construed as one with the Companies Acts, 1862, 1867, 1877, 1879, 1880, and 1883, and the Joint Stock Companies Arrangement Act, 1870, and the said Acts and this Act may be referred to as the Companies Acts, 1862 to 1886.

25 & 26 Vict. c. 89. 30 & 31 Vict. c. 131. 40 & 41 Vict. c. 26. 42 & 43 Vict. c. 76. 43 Vict. c. 19. 46 & 47 Vict. c. 28. 33 & 34 Vict. c. 104.

3. In the winding up, by or subject to the supervision of the Court, of any company under the Companies Acts, 1862 to 1886, whose registered office is in Scotland. where the winding up shall commence after the passing of this Act, the following provisions shall have effect:

Effect of diligence within 60 days of winding up by or subject to supervision of Court.

(1.) Such winding up shall, in the case of a winding up by the Court as at the commencement thereof, and in the case of a winding up subject to the supervision of the Court as at the date of the presentation of the petition, on which a supervision order is afterwards pronounced, be equivalent to an arrestment in execution and decree of forthcoming, and to an executed or completed poinding; and no arrestment or poinding of the funds or effects of the company, executed on or after the sixtieth day prior to the commencement of the winding up by the Court, or to the presentation of the petition on which a supervision order is made, as the case may be, shall be effectual; and such funds or effects, or the proceeds of such effects, if sold, shall be made forthcoming to the liquidator: Provided that any arrester or poinder, before the date of such winding up, or of such petition, as the case may be, who shall be thus deprived of the benefit of his diligence, shall have preference out of such funds or effects for the expense *bonâ fide* incurred by him in such diligence.

(2.) Such winding up shall, as at the respective dates aforesaid, be equivalent to a decree of adjudication of the heritable estates of the company for payment of the whole debts of the company, principal and interest, accumulated at the said dates respectively, subject always to such preferable heritable rights and securities

(*v*) See Comp. Act, 1862, § 51.

as existed at the said dates and are valid and unchallengeable, and the right to poind the ground hereinafter provided.

(3.) The provisions of sections one hundred and twelve to one hundred and seventeen inclusive, and also of section one hundred and twenty, of the Bankruptcy (Scotland) Act, 1856, shall, so far as consistent with the tenor of the recited Acts, apply to the realisation of heritable estates affected by such heritable rights and securities as aforesaid; and for the purposes of this Act, the words "sequestration" and "trustee" occurring in said sections of the Bankruptcy (Scotland) Act, 1856, shall mean respectively "liquidation" and "liquidator"; and the expression "the lord ordinary or the Court" shall mean "the Court" as defined by this Act.

19 & 20 Vict. c. 79.

(4.) No poinding of the ground which has not been carried into execution by sale of the effects sixty days before the respective dates aforesaid shall, except to the extent hereinafter provided, be available in any question with the liquidator: Provided that no creditor who holds a security over the heritable estate preferable to the right of the liquidator shall be prevented from executing a poinding of the ground after the respective dates aforesaid, but such poinding shall in competition with the liquidator be available only for the interest on the debt for the current half yearly term, and for the arrears of interest for one year immediately before the commencement of such term.

Ranking of claims.

4. In the winding up of any company under the Companies Acts, 1862 to 1886, whose registered office is in Scotland, and where the winding up shall commence after the passing of this Act, the general and special rules in regard to voting and ranking for payment of dividends, provided by the Bankruptcy (Scotland) Act, 1856, sections forty-nine to sixty-six inclusive, or any other rules in regard thereto which may be in force for the time being in the sequestration of the estates of bankrupts in Scotland, shall, so far as consistent with the tenor of the said recited Acts, apply to creditors of such companies voting in matters relating to the winding up, and ranking for payment of dividends; and for this purpose sequestration shall be taken to mean liquidation, trustee to mean liquidator, and sheriff to mean the Court.

Jurisdiction of the Lord Ordinary on the bills in vacation.

5. Wherever the expression "the Court of Session" occurs in the said recited Acts, or the expression "the Court" occurring therein or in this Act refers to the Court of Session in Scotland, it shall mean and include either division thereof, or in the event of a remit to a permanent lord ordinary, as hereinafter provided, such lord ordinary, during session, and in time of vacation the lord ordinary on the bills; and in regard to orders or judgments pronounced by the said lord ordinary on the bills in vacation, the following provisions shall have effect:—

(1.) No order or judgment pronounced by the said lord ordinary in vacation, under or by virtue, in whole or in part, of the following sections of the said recited Acts, shall be subject to review, reduction, suspension, or stay of execution, videlicet, of the Companies Act, 1862, sections ninety-one, one hundred and seven, one hundred and fifteen, one hundred and seventeen, and one hundred and twenty-seven, and section one hundred and forty-nine, so far as it authorises the Court to direct meetings of

25 & 26 Vict. c. 89.

creditors or contributories to be held, and that portion of section two of the Joint Stock Companies Arrangement Act, 1870, which authorises the Court to order that a meeting of creditors or class of creditors shall be summoned; and also sections one hundred and twenty-two and one hundred and twenty-three of the Companies Act, 1862, so far as they may affect the sections above enumerated.

33 & 34 Vict. c. 104.

(2.) All other orders or judgments pronounced by the said lord ordinary in vacation (except as after mentioned) shall be subject to review only by reclaiming note, in common form, presented (notwithstanding the terms of section one hundred and twenty-four of the Companies Act, 1862) within fourteen days from the date of such order or judgment: Provided always, that such orders or judgments pronounced by the said lord ordinary in vacation, under or by virtue, in whole or in part, of the following sections of the Companies Act, 1862, shall, from the dates of such orders or judgments, and notwithstanding any reclaiming note against the same, be carried out and receive effect till such reclaiming note be disposed of by the Court, videlicet, sections eighty-five, eighty-seven, eighty-nine, ninety-three (except in regard to the removal or remuneration of liquidators), ninety-five, ninety-six (except in regard to the power to sell), one hundred, one hundred and eighteen, first part of one hundred and forty-one, one hundred and forty-seven, one hundred and fifty (except in regard to the removal of liquidators and the filling up of vacancies caused by such removal), one hundred and ninety-seven, one hundred and ninety-eight, and two hundred and one; and also sections one hundred and twenty-two and one hundred and twenty-three of the Companies Act, 1862, so far as they may affect the sections above enumerated.

Provided that nothing in this section contained shall in any way affec the provisions of section one hundred and twenty-one of the Companies Act, 1862, in reference to decrees for payment of calls in the winding up companies, whether voluntarily or by or subject to the supervision of the Court.

Winding up may be remitted to lord ordinary.

6. When the Court makes a winding up or a supervision order or at any time thereafter, it shall be lawful for the Court, in either division thereof, if it thinks fit, to direct all subsequent proceedings in the winding up to be taken before one of the permanent lords ordinary, and to remit the winding up to him accordingly; and thereupon such lord ordinary shall, for the purposes of the winding up, be deemed to be "the Court," within the meaning of the recited Acts and this Act, and shall have, for the purposes of such winding up, all the jurisdiction and powers of the Court of Session: Provided always, that all orders or judgments pronounced by such lord ordinary shall be subject to review only by reclaiming note in common form, presented (notwithstanding the terms of section one hundred and twenty-four of the Companies Act, 1862,) within fourteen days from the date of such order or judgment. But, should a reclaiming note not be presented and moved during session, the provisions of section five of this Act shall apply to such orders or judgments: Provided also, that the said lord ordinary may report to the division of the Court any matter which may arise in the course of the winding up. This

APPENDIX VI.

section and the immediately preceding section shall come into force from the passing of this Act, and shall include companies then in the course of being wound up.

PREFERENTIAL PAYMENTS IN BANKRUPTCY ACT, 1888.

51 & 52 VICT. CAP. 62 (*w*).

An Act to amend the Law with respect to Preferential Payments in Bankruptcy, and in the winding-up of Companies. [*24th December*, 1888.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Priority of debts.

1.—(1.) In the distribution of the property of a bankrupt, and in the distribution of the assets of the company being wound up under the Companies Act, 1862, and the Acts amending the same, there shall be paid in priority to all other debts—

(a.) All parochial or other local rates due from the bankrupt or the company at the date of the receiving order or, as the case may be, the commencement of the winding up, and having become due and payable within twelve months next before that time, and all assessed taxes, land tax, property or income tax assessed on the bankrupt or the company up to the fifth day of April next before the date of the receiving order, or, as the case may be, the commencement of the winding up, and not exceeding in the whole one year's assessment;

(b.) All wages or salary of any clerk or servant in respect of services rendered to the bankrupt or the company during four months before the date of the receiving order, or, as the case may be, the commencement of the winding up, not exceeding fifty pounds; and

(c.) All wages of any labourer or workman not exceeding twenty-five pounds, whether payable for time or for piece work, in respect of services rendered to the bankrupt or the company during two months before the date of the receiving order or, as the case may be, the commencement of the winding up: Provided that where any labourer in husbandry has entered into a contract for the payment of a portion of his wages in a lump sum at the end of the year of hiring, he shall have priority in respect of the whole of such sum, or a part thereof, as the Court may decide to be due under the contract, proportionate to the time of service up to the date of the receiving order, or, as the case may be, the commencement of the winding up.

(2.) The foregoing debts shall rank equally between themselves and shall be paid in full, unless the property of the bankrupt is, or the assets of the company are, insufficient to meet them, in which case they shall abate in equal proportions between themselves.

(3.) Subject to the retention of such sums as may be necessary for the

(*w*) See, too, the Preferential Payments in Bankruptcy Amendment Act, 1897, and *ante*, pp. 998–1001. See as to Queen's taxes assessed on companies wound up by the Court, the regulations of the Board of Trade and the Commissioners of Inland Revenue, printed *infra*.

costs of administration or otherwise, the foregoing debts shall be discharged forthwith as far as the property of the debtor, or the assets of the company, as the case may be, is or are sufficient to meet them.

(4.) In the event of a landlord or other person distraining or having distrained on any goods or effects of a bankrupt or a company being wound up within three months next before the date of the receiving order or the winding-up order respectively, the debts to which priority is given by this section shall be a first charge on the goods or effects so distrained on, or the proceeds of the sale thereof.

Provided, that in respect of any money paid under any such charge the landlord or other person shall have the same rights of priority as the person to whom such payment is made.

(5.) This section, so far as it relates to the property of a bankrupt, shall have effect as part of section forty of the Bankruptcy Act, 1883.

(6.) This section shall apply, in the case of a deceased person who dies insolvent, as if he were a bankrupt, and as if the date of his death were substituted for the date of the receiving order.

Savings.

2.—(1.) Nothing in this Act shall alter the effect of section five of the Act twenty-eight and twenty-nine Victoria, chapter eighty-six, "To amend the law of partnership," or shall prejudice the provisions of the Friendly Societies Act, 1875, or shall affect the priority given to the payment of funeral and testamentary expenses by section one hundred and twenty-five of the Bankruptcy Act, 1883.

(2.) Nothing in this Act shall affect the provisions of the Stannaries Act, 1887. 50 & 51 Vict. c. 43.

Application of Act.

3. This Act shall apply only in the case of receiving orders and orders for the administration of the estates of deceased debtors according to the law of bankruptcy made and windings up commenced after the commencement of this Act.

Extent of Act.

4. This Act shall not apply to Ireland (*x*).

Commencement of Act.

5. This Act shall commence and come into operation from and immediately after the last day of December one thousand eight hundred and eighty-eight.

Repeal.

6. The enactments specified in the schedule hereto are hereby repealed to the extent in the third column of that schedule mentioned.

Short title.

7. This Act may be cited as the Preferential Payments in Bankruptcy Act, 1888.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title.	Extent of Repeal.
46 & 47 Vict. c. 28	The Companies Act, 1883	The whole Act, except as regards its application to Ireland.
46 & 47 Vict. c. 52	The Bankruptcy Act, 1883	Section forty, sub-sections one and two.
49 & 50 Vict. c. 28	The Bankruptcy (Agricultural Labourers' Wages) Act, 1886.	The whole Act.

(*x*) As to Ireland, see The Preferential Payments in Bankruptcy (Ireland) Act, 1889, 52 & 53 Vict. c. 60.

APPENDIX VI.

COMPANIES (MEMORANDUM OF ASSOCIATION) ACT, 1890.

53 & 54 VICT. CAP. 62 (*y*).

An Act to give further powers to Companies with respect to certain instruments under which they may be constituted or regulated. [*18th August*, 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Power for company to alter objects or form of constitution subject to confirmation by Court.

1.—(1.) Subject to the provisions of this Act, a company registered under the Companies Act, 1862 to 1886, may, by special resolution (*z*), alter the provisions of its memorandum of association (*a*), or deed of settlement (*b*), with respect to the objects of the company, so far as may be required for any of the purposes hereinafter specified, or alter the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, either with or without any such alteration as aforesaid with respect to the objects of the company, but in no case shall any such alteration take effect until confirmed on petition by the Court which has jurisdiction to make an order for winding up the company (*c*).

(2.) Before confirming any such alteration the Court must be satisfied—

(a.) that sufficient notice has been given to every holder of debentures or debenture stock of the company, and any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(b.) that, with respect to every creditor who in the opinion of the Court is entitled to object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court (*d*).

Provided that the Court may, in the case of any person or class of persons, for special reasons, dispense with the notice required by this section.

(3.) An order confirming any such alteration may be made on such terms and subject to such conditions as to the Court seems fit, and the Court may make such orders as to costs as it deems proper.

(4.) The Court shall, in exercising its discretion under this Act, have regard to the rights and interests of the members of the company, or of any class of those members, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members (*e*); and the Court may

(*y*) See *ante*, pp. 456–460, and p. 464.

(*z*) See Companies Act, 1862, § 51.

(*a*) See ib. § 12, and *ante*, pp. 459, 460.

(*b*) See *infra*, § 3 (3).

(*c*) See Companies (Winding-up) Act, 1890, § 1, and *ante*, pp. 828 *et seq.* The jurisdiction of the High Court in England can be exercised either by any judge of the Chancery Division, or by the judge to whom the winding-up business is assigned, *Mining Shares Investment Co.* [1893], 2 Ch. 660.

(*d*) Compare Comp. Act, 1867, § 11.

(*e*) Compare Comp. Act, 1862, §§ 161, 162.

give such directions and make such orders as it may think expedient for the purpose of facilitating any such arrangement or carrying the same into effect: Provided always, that it shall not be lawful to expend any part of the capital of the company in any such purchase.

(5.) The Court may confirm, either wholly or in part, any such alteration as aforesaid with respect to the objects of the company if it appears that the alteration is required in order to enable the company—

(a.) To carry on its business more economically or more efficiently; or

(b.) To attain its main purpose by new or improved means; or

(c.) To enlarge or change the local area of its operations; or

(d.) To carry on some business or businesses which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(e.) To restrict or abandon any of the objects specified in the memorandum of association or deed of settlement.

Registration of order together with memorandum as altered or substituted memorandum and articles and consequences thereof.

2.—(1.) Where a company has altered the provisions of its memorandum of association or deed of settlement with respect to the objects of the company, or has altered the form of its constitution by substituting a memorandum and articles of association for a deed of settlement, and such alteration has been confirmed by the Court, an office copy of the order confirming such alteration, together with a printed copy of the memorandum of association or deed of settlement so altered, or together with a printed copy of the substituted memorandum and articles of association (as the case may be), shall be delivered by the company to the Registrar of Joint-stock Companies within fifteen days from the date of the order, and the registrar shall register the same, and shall certify under his hand the registration thereof, and his certificate shall be conclusive evidence that all the requisitions of this Act with respect to such alteration and the confirmation thereof have been complied with (*f*), and thenceforth (but subject to the provisions of this Act) the memorandum or deed of settlement so altered shall be the memorandum of association or deed of settlement of the company, or, as the case may be, such substituted memorandum and articles of association shall apply to the company in the same manner as if the company were a company registered under Part I. of the Companies Act, 1862, with such memorandum and articles of association, and the company's deed of settlement shall cease to apply to the company.

(2.) If a company makes default in delivering to the registrar any document required by this Act to be delivered to him the company shall be liable to a penalty not exceeding ten pounds for every day during which it is in default (*g*).

Short title and construction.

3.—(1.) This Act may be cited as the Companies (Memorandum of Association) Act, 1890.

(2.) This Act and the Companies Act, 1862 to 1886, shall be construed as one Act, and may be cited collectively as the Companies Acts, 1862 to 1890.

(3.) In this Act the expression "deed of settlement" includes any contract of co-partnery or other instrument constituting or regulating the company and not being an Act of Parliament, a royal charter, or letters patent (*h*).

(*f*) Compare Comp. Act, 1900, § 1, and Comp. Act, 1867, § 15.

(*g*) As to recovery of penalties, see Comp. Act, 1862, § 65.

(*h*) See Comp. Act, 1862, § 196.

APPENDIX VI.

THE COMPANIES (WINDING-UP) ACT, 1890.

53 & 54 VICT. CAP. 63.

An Act to amend the Law relating to the Winding up of Companies in England and Wales. [*18th August*, 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

Jurisdiction to wind up companies.

1.—(1.) The Courts having jurisdiction to wind up companies (*i*) in England and Wales shall be the High Court (*k*), the Chancery Courts of the counties palatine of Lancaster and Durham (*l*), the County Courts (*m*), and the Stannaries Court (*n*).

(2.) Where the amount of the capital of a company paid up or credited as paid up exceeds ten thousand pounds, a petition (*o*) to wind up the company or to continue the winding up of the company under the supervision of the Court shall be presented to the High Court, or, in the case of a company situate within the jurisdiction of either of the palatine Courts aforesaid, either to the High Court or to the palatine Court having jurisdiction.

(3.) Where the amount of the capital of a company paid up or credited as paid up does not exceed ten thousand pounds, and the registered office (*p*) of the company is situate within the jurisdiction of a County Court (*q*) having jurisdiction under this Act, a petition to wind up the company or to continue the winding up of the company under the supervision of the Court shall be presented to that County Court.

(4.) Provided that where a company is formed for working mines within the Stannaries and is not shown to be actually working mines beyond the limits of the Stannaries, or to be engaged in any other undertaking beyond those limits, or to have entered into a contract for such working or undertaking, a petition to wind up the company or to continue the winding up of the company under the supervision of the Court shall be presented to the Stannaries Court (*r*) whatever may be the amount of the capital of the company, and wherever the registered office of the company is situate (*s*).

(*i*) See *ante*, pp. 828–833. The Act only applies to England and Wales. See § 31 (3), and *ante*, p. 826, as to Industrial and Provident Societies and Benefit Building Societies, see *ante*, pp. 832, 1231, and 1240.

(*k*) See § 2.

(*l*) See as to Lancaster, 53 & 54 Vict. c. 23, § 3; and as to Durham, 52 & 53 Vict. c. 47; the jurisdiction of these Courts is not, however, exclusive, see sub-sect. (2).

(*m*) See *infra*, sub-sect. (5).

(*n*) See § 32 (1) and *infra*, note (*r*), and p. 1388, note (*i*).

(*o*) See, generally, as to the petition, Rules, 1890, rr. 33–37, and Rules, 1892, rr. 15, 18–24.

(*p*) See as to the meaning of this, § 32 (3).

(*q*) As to the sittings of the County Courts, see Rules, 1890, rr. 18 and 19.

(*r*) The County Court at Truro. See Stannaries Court Abolition Act, 1896, and the Lord Chancellor's order thereunder, and the County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, June, 1899, printed *infra*.

(*s*) This sub-section superseded 50 & 51 Vict. c. 43, § 28, since repealed by the Stannaries Court Abolition Act, 1896.

(5.) The Lord Chancellor may by order (*t*) exclude a County Court from having jurisdiction under this Act, and for the purposes of such jurisdiction may attach its district, or any part thereof, to the High Court or to any other County Court, and may revoke or vary any such order (*u*). In exercising his powers under this section the Lord Chancellor shall provide that a County Court shall not have jurisdiction under this Act unless it has for the time being jurisdiction in bankruptcy.

(6.) Every Court having jurisdiction under this Act to wind up a company shall for the purposes of that jurisdiction have all the powers of the High Court, and every prescribed (*x*) officer of the Court shall perform any duties which an officer of the High Court may discharge by order of the judge thereof or otherwise in relation to the winding up of a company.

(7.) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court (*y*).

Conduct of winding-up business in High Court.

36 & 37 Vict. c. 66.

2. Subject to general rules and to orders of transfer made under the authority of the Supreme Court of Judicature Act, 1873, and the Acts amending it, the jurisdiction of the High Court under this Act shall, as the Lord Chancellor may from time to time by general order direct, be exercised, either generally or in specified classes of cases, either by such judge or judges of the Chancery Division of the High Court as the Lord Chancellor may assign to exercise that jurisdiction, or by the judge who, for the time being, exercises the bankruptcy jurisdiction of the High Court (*z*).

Transfer of proceedings.

3.—(1.) The winding up of a company or any proceedings therein (*a*) may at any time and at any stage, and either with or without application from any of the parties thereto, be transferred from one Court to another Court, or may be retained in the Court in which the proceedings were commenced, although it may not be the Court in which the proceedings ought to have been commenced.

(2.) The powers of transfer given by the foregoing provisions of this section may, subject to and in accordance with general rules, be exercised by the Lord Chancellor or by any judge of the High Court having jurisdiction under this Act, or, as regards any case within the jurisdiction of any other Court, by the judge of that Court (*b*).

(3.) If any question arises in any winding-up proceeding in a County Court or in the Stannaries Court (*c*) which all the parties to the proceeding, or which one of them and the judge of the Court, may desire to have determined in the first instance in the High Court, the judge shall state

(*t*) See the County Courts Bankruptcy and Companies Winding-up Jurisdiction Order, 1899, *infra*.

(*u*) See Rules, 1890, r. 15 as to the transfer of pending business.

(*x*) Prescribed means by general rules. See § 32.

(*y*) See *Re French*, 24 Q. B. Div. 63, and *Ex parte May*, 14 Q. B. D. 37, decided on a similar provision of the Bankruptcy Act, 1883 (§ 95 (3)).

(*z*) See Order of 6th December, 1901, printed *infra*, and *ante*, p. 829, note (*k*).

(*a*) Including proceedings in a voluntary winding up, see *Stock and Share Auction, &c., Co.* [1894], 1 Ch. 736.

(*b*) See, generally, as to the transfer of proceedings, Rules 8–15, and *Ex parte Soanes*, 13 Q. B. D. 484, decided under a similar section in the Bankruptcy Act, 1883. As to the transfer of actions to the Judge of the High Court exercising jurisdiction under this Act, see Rules, August, 1892.

(*c*) Now the County Court at Truro, see *ante*, p. 1372, note (*r*).

the facts in the form of a special case (*d*) for the opinion of the High Court, and thereupon the special case and the proceedings, or such of them as may be required, shall be transmitted to the High Court for the purposes of the determination.

Provisions as to liquidator.

4.—(1.) On an order (*e*) being made by the Court for winding up a company the officer hereinafter mentioned shall, by virtue of his office, become the provisional liquidator of the company, and shall continue to act as such until he or another person (*f*) becomes liquidator and is capable of acting as such.

(2.) The said officer shall be the Official Receiver, if any, attached to the Court for bankruptcy purposes, or if there is more than one such Official Receiver, then such one of them as the Board of Trade may appoint, or, if there is no such Official Receiver, then an officer appointed for the purpose by the Board of Trade. Any such officer shall for the purpose of his duties under this Act be styled the Official Receiver (*g*).

(3.) When a person other than the Official Receiver (*h*) is appointed liquidator of a company he shall be styled liquidator and not official liquidator of the company, and the provisions of the Companies Acts relating to the official liquidator shall, in their application to him, be construed as if the word "official" were omitted therefrom. Such a person shall not be capable of acting as liquidator until he has notified his appointment to the registrar of joint-stock companies and given security in the manner prescribed (*i*) to the satisfaction of the Board of Trade. He shall give the Official Receiver such information and such access to and facilities for inspecting the books and documents of the company, and generally such aid, as may be requisite for enabling that officer to perform his duties under this Act.

(4.) If any vacancy occurs in the office of liquidator of a company (*j*), the Official Receiver shall, by virtue of his office, be the liquidator during the vacancy (*k*).

(5.) The Official Receiver may be appointed by the Court provisional liquidator (*l*) of the company at any time after the presentation of the petition and before a winding-up order has been made.

(6.) Where an application is made to the Court to appoint a receiver on behalf of the debenture holders or other creditors of a company the Official Receiver may be so appointed (*m*).

(*d*) As to the right of appeal from the decision of the judge, see *Ex parte Dawes*, 17 Q. B. Div. 275, decided under a similar clause in the Bankruptcy Act, 1883.

(*e*) That is a compulsory order, see § 31 (2). As to the form and contents of the order, see Rules, 1890, rr. 38–41 ; Rules, 1892, rr. 22–24.

(*f*) As to the appointment of a liquidator, see § 6, and *ante*, p. 968.

(*g*) As to the appointment of the Official Receiver and assistants, see Rules, 1890, rr. 162 *et seq.* When there is a transfer of proceedings, see Rules, 1890, r. 12.

(*h*) The Official Receiver is the liquidator if no other is appointed. See § 6 (3).

(*i*) See formerly Companies Act, 1862, § 92, now in part repealed. See Rules, 1890, rr. 67 and 68.

(*j*) *I.e.*, when the company is being wound up by the Court, see [1894], 1 Ch. p. 742.

(*k*) As to filling the vacancy, see Rules, 1890, r. 65.

(*l*) See Rules, 1890, r. 32, and Rules, 1892, r. 22, and *ante*, pp. 965–967.

(*m*) See *ante*, pp. 341, 342.

Power to appoint special manager.

5.—(1.) Where the Official Receiver becomes the liquidator of a company, whether provisionally or otherwise, he may, if satisfied that the nature of the estate or business of the company, or the interests of the creditors or contributories generally, require the appointment of a special manager of the estate or business of the company other than himself, apply to the Court to, and the Court may on such application, appoint a special manager (*n*) thereof during such time as the Court may direct, with such powers, including any of the powers of a receiver or manager, as may be entrusted to him by the Court.

(2.) The special manager shall give such security (*o*) and account (*p*) in such manner as the Board of Trade direct.

(3.) The special manager shall receive such remuneration (*q*) as may be fixed by the Court.

Meeting of creditors.

6.—(1.) When the Court has made an order for winding up a company the Official Receiver shall summon separate meetings (*r*) of the creditors and contributories of the company for the purpose of—

(a.) determining whether or not an application (*s*) is to be made to the Court for appointing a liquidator in the place of the Official Receiver; and

(b.) determining whether or not an application is to be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of such committee if appointed (*t*).

The Court may make any appointment and order required to give effect to any such determination, and if there is a difference between the determinations of the meetings of the creditors and contributories in respect of any of the matters mentioned in the foregoing provisions, the Court shall decide the difference and make such order thereon as the Court may think fit (*u*).

(2.) The provisions of the First Schedule to this Act shall, subject to such modifications as may be made therein by general rules (*x*), apply to any meeting summoned in pursuance of this section.

(3.) In case a liquidator is not appointed by the Court the Official Receiver shall be the liquidator of the company.

Statement of company's affairs.

7.—(1.) Where the Court has made an order for winding up a company, there shall be made out and submitted to the Official Receiver a statement as to the affairs (*y*) of the company in the prescribed form, verified by affidavit, and showing the particulars of the assets, debts, and liabilities of the company, the names, residences, and occupations of the creditors of the company, the securities held by them respectively, the dates when the securities were respectively given, and such further or other information as may be prescribed or as the Official Receiver may require.

(*n*) See Rules, 1890, r. 42.

(*o*) See Rules, 1890, rr. 67 and 68.

(*p*) See Rules, 1890, r. 172.

(*q*) See Rules, 1890, rr. 31 and 42 (2).

(*r*) See Rules, 1890, rr. 43–46. As to these meetings, see *ante*, pp. 956, 961, 962, and 968.

(*s*) As to the form of the application, see Rules, 1890, rr. 4–6.

(*t*) No defect or irregularity in the appointment of a liquidator or member of the committee of inspection vitiates an act done by him in good faith. Rule 177 (2).

(*u*) See Rules, 1890, rr. 63–66, and *ante*, pp. 956 and 962.

(*x*) See Rules, 1892, r. 32.

(*y*) See, generally, as to this statement, Rules, 1890, rr. 58–62, and *ante*, pp. 957, 958.

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(2.) The statement shall be submitted and verified by one or more of the persons who are at the time of the winding-up order the directors and by the person who is at that time the secretary or other chief officer of the company, or by such of the persons being or having been directors or officers of the company or having taken part in the formation of the company at any time within one year before the order for winding up the company, as the Official Receiver, subject to the direction of the Court, may require to submit, and verify the same (*z*).

(3.) The statement shall be submitted within fourteen days from the date of the order, or within such extended time as the Official Receiver or the Court may for special reasons appoint (*a*).

(4.) Any person making or concurring in making the statement and affidavit required by this section shall be allowed, and shall be paid by the Official Receiver, out of the assets of the company (*b*), such costs and expenses incurred in and about the preparation and making of such statement and affidavit as the Official Receiver may consider reasonable, subject to an appeal to the Court (*c*).

(5.) If any person, without reasonable excuse, makes default in complying with the requirements of this section, he shall be liable to a fine not exceeding ten pounds for every day during which the default continues (*d*).

(6.) Any person stating himself in writing to be a creditor or contributory of the company shall be entitled by himself or by his agent at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court and shall be punishable accordingly on the application of the liquidator or of the Official Receiver (*e*).

Report on winding up and proceedings thereupon.

8.—(1.) Where the Court has made an order for winding up a company, the Official Receiver shall, as soon as practicable after receipt of the statement of the company's affairs (*f*), submit a preliminary report (*g*) to the Court—

(a.) as to the amount of capital issued, subscribed, and paid up, and the estimated amount of assets and liabilities; and

(b.) if the company has failed, as to the causes of the failure; and

(c.) whether in his opinion further inquiry is desirable as to any matter relating to the promotion, formation, or failure of the company, or the conduct of the business thereof.

(2.) The Official Receiver may also, if he thinks fit, make a further report, or further reports, stating the manner in which the company was formed and whether in his opinion any fraud has been committed by any

(*z*) The winding-up order is to contain a note that it will be the duty of such persons to attend on the Official Receiver forthwith on service of the order at the place mentioned therein, see Rules, 1890, r. 38.

(*a*) As to the application for an extension of time, see Rules, 1890, r. 59.

(*b*) See Rules, 1890, rr. 31 and 62.

(*c*) As to these appeals, see Rules, 1890, rr. 170 and 176.

(*d*) The default may be reported to the Court by the Official Receiver, see Rules, 1890, r. 61. See, too, *ante*, p. 958, note (*k*).

(*e*) Compare § 15 (1).

(*f*) See § 7.

(*g*) See as to these reports, *ante*, pp. 928–930 and 959, and Rules, 1890, rr. 69–71.

person in the promotion or formation of the company or by any director or other officer of the company in relation to the company since the formation thereof, and any other matters which in his opinion it is desirable to bring to the notice of the Court (*h*).

(3.) The Court may, after consideration of any such report, direct that any person who has taken any part in the promotion or formation of the company, or has been a director or officer of the company, shall attend before the Court on a day appointed by the Court for that purpose, and be publicly examined (*i*) as to the promotion or formation of the company, or as to the conduct of the business of the company, or as to his conduct and dealings as director or officer of the company.

(4.) The Official Receiver shall take part in the examination, and for that purpose may, if specially authorised by the Board of Trade in that behalf, employ a solicitor with or without counsel.

(5.) The liquidator, where the Official Receiver is not the liquidator, and any creditor or contributory of the company may also take part in the examination either personally or by solicitor or counsel.

(6.) The Court may put such questions (*k*) to the person examined as to the Court may seem expedient.

(7.) The person examined shall be examined on oath, and it shall be his duty to answer all such questions (*l*) as the Court may put or allow to be put to him (*m*). The person examined shall at his own cost, prior to such examination, be furnished with a copy of the Official Receiver's report, and shall also at his own cost be entitled to employ at such examination a solicitor, with or without counsel, who shall be at liberty to put such questions to the persons examined as the Court may deem just for the purpose of enabling that person to explain or qualify any answers given by him. Provided always, that if such person is, in the opinion of the Court, exculpated from any charges made or suggested against him (*n*), the Court may allow him such costs as the Court in its discretion may think fit. Notes of the examination shall be taken down in writing, and shall be read over to or by, and signed by, the person examined, and may thereafter be used in evidence against him (*o*). They shall also be open to the inspection of any creditor or contributory of the company at all reasonable times (*p*).

(8.) The Court may, if it thinks fit, adjourn the examination from time to time.

(9.) A public examination under this section may, if the Court so directs, and subject to general rules (*q*), be held before any judge of County Courts, or before any officer of the Supreme Court, being an official referee,

(*h*) *Ante*, pp. 528, 529.

(*i*) See, generally, as to this examination, *ante*, pp. 528 *et seq.*, and Rules, 1890, rr. 5, 72–77, Rules, 1892, r. 26. Compare Comp. Act, 1862, § 115. If the person fails to attend, a warrant for his arrest may be issued, see Rules, 1890, rr. 20A *et seq.* and 76. As to taking shorthand notes of the evidence, see Rules, 1890, r. 16.

(*k*) As to questions tending to criminate, see *Ex parte Scholefield*, 6 Ch. D. 230.

(*l*) A person who refuses to answer questions may be committed, see Rules, 1890, rr. 17 and 20A.

(*m*) As to the Court's discretion, see *London and Globe Finance Corp.*, W. N. 1902, p. 16.

(*n*) See *ante*, p. 933.

(*o*) See Rules, 1892, r. 27.

(*p*) See Rules, 1890, r. 77, and Rules, 1892, r. 32.

(*q*) See Rules, 1890, rr. 5 and 72, and Rules, 1892, r. 26.

master, registrar in bankruptcy, or chief clerk, or before any district registrar of the High Court named for the purpose by the Lord Chancellor, or in the case of companies being wound up by a Palatine Court, before a registrar of that Court, and the powers of the Court under sub-sections six, seven, and eight of this section may (except as to costs) be exercised by the person before whom the examination is held.

Committee of inspection.

9.—(1.) A committee of inspection (*r*) appointed in pursuance of this Act (*s*) shall consist of persons being creditors or contributories of the company or persons holding general powers of attorney from such persons in such proportions as may be agreed on by the meetings of creditors and contributories or as, in case of difference, may be determined by the Court.

(2.) The committee of inspection shall meet at such times as they from time to time appoint, and, failing such appointment, at least once a month; and the liquidator or any member of the committee may also call a meeting of the committee as and when he thinks necessary.

(3.) The committee may act by a majority of their members present at a meeting, but shall not act unless a majority of the committee are present at the meeting.

(4.) Any member of the committee may resign his office by notice in writing signed by him, and delivered to the liquidator.

(5.) If a member of the committee becomes bankrupt, or compounds or arranges with his creditors, or is absent from five consecutive meetings of the committee without the leave of those members of the committee who together with himself represent the creditors or contributories as the case may be, his office shall thereupon become vacant.

(6.) Any member of the committee representing creditors may be removed by an ordinary resolution at any meeting of creditors of which seven days' notice has been given, stating the object of the meeting. Any member of the committee representing contributories may be removed by an ordinary resolution at any meeting of contributories, of which seven days' notice has been given stating the object of the meeting.

(7.) On a vacancy occurring in the office of a member of the committee, the liquidator shall forthwith summon a meeting of creditors or of contributories (*t*) as the case may require, for the purpose of filling the vacancy, and the meeting may, by resolution, re-appoint the same or appoint another creditor or contributory to fill the vacancy.

(8.) The continuing members of the committee, provided there be not less than two such continuing members, may act notwithstanding any vacancy in their body.

(9.) If there be no committee of inspection, any act or thing or any direction or permission by this Act authorised or required to be done or given by the committee may be done or given by the Board of Trade on the application of the liquidator (*u*).

(*r*) As to the remuneration of members of the committee, see Rules, 1890, rr. 154 *et seq.* As to their disabilities in dealing with the assets of the company, see Rules, 1890, rr. 156 *et seq.* A formal defect in the appointment of any member will not invalidate any act done by him *bonâ fide*, see ib. r. 177 (2).

(*s*) See § 6, and *ante*, pp. 961, 962.

(*t*) As to the rules governing the meetings of creditors and contributories other than the first meeting, see Rules, 1890, rr. 47–57, and Rules, 1892, r. 25.

(*u*) See Rules, 1890, r. 169.

Power of Court to assess damages against delinquent directors, officers, and promoters (*x*).

10.—(1.) Where in the course of the winding up of a company under the Companies Acts it appears that any person who has taken part in the formation or promotion of the company, or any past or present director, manager, liquidator, or other officer of the company, has misapplied or retained or become liable or accountable for any moneys or property of the company, or been guilty of any misfeasance or breach of trust in relation to the company, the Court may, on the application (*y*) of the Official Receiver, or of the liquidator of the company, or of any creditor or contributory of the company, examine (*z*) into the conduct of such promoter, director, manager, liquidator, or other officer of the company, and compel him to repay any moneys or restore any property so misapplied or retained, or for which he has become liable or accountable together with interest after such rate as the Court thinks just, or to contribute such sums of money to the assets of the company by way of compensation in respect of such misapplication, retainer, misfeasance, or breach of trust as the Court thinks just (*a*).

(2.) The provisions of this section shall apply in the winding up of any company under the Companies Acts whether the same is being wound up by or subject to the supervision of the Court or is being wound up voluntarily, and whether the winding up commenced before or after the passing of this Act, and notwithstanding that the offence is one for which the offender may be criminally responsible.

Payment of money into Bank of England (*b*).

11.—(1.) An account, called the Companies Liquidation Account, shall be kept by the Board of Trade with the Bank of England, and all moneys received by the Board of Trade in respect of proceedings under this Act shall be paid to that account.

(2.) Every liquidator of a company which is being wound up by order of the Court shall, in such manner and at such times as the Board of Trade, with the concurrence of the Treasury, direct, pay the money received by him to the Companies Liquidation Account at the Bank of England, and the Board of Trade shall furnish him with a certificate of receipt of the money so paid.

(3.) Provided that, if the committee of inspection satisfy the Board of

(*x*) This section replaces § 165 of the Companies Act, 1862, which is repealed so far as England and Wales are concerned. See § 33. The present section

(1.) Enables the Official Receiver to apply to the Court.

(2.) Expressly extends to promoters.

(3.) The property as well as the moneys of the company are mentioned.

(4.) The provisions of the section are expressly mentioned to apply as well to a voluntary winding up and a winding up under supervision as to a winding up under the Court.

With these additions and the omission of the words "in his own hands" after the word "retained" and the alteration in the position of the reference to criminal responsibility, the wording of § 165 is followed. See *ante*, pp. 940 *et seq.*

(*y*) See Rules, 1890, rr. 78 and 79 as to the form of the application.

(*z*) See Rules, 1890, rr. 16 and 17. As to the use of depositions taken on a public examination under § 8 in proceedings under this section, see Rules, 1892, r. 27.

(*a*) See Comp. (Winding-up) Act, 1893, by which an order for payment of money under this section is deemed to be a final judgment under the Bankruptcy Act, 1890, § 4 (1).

(*b*) See, too, regulations of the Board of Trade, printed *infra*.

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Trade that for the purpose of carrying on the business of the company or of obtaining advances, or for any other reason, it is for the advantage of the creditors or contributories that the liquidator should have an account with any other bank, the Board of Trade shall, on the application of the committee of inspection (*c*), authorise the liquidator to make his payments into and out of such other bank as the committee may select, and thereupon those payments shall be made in the prescribed manner (*d*).

(4.) If any such liquidator at any time retains for more than ten days a sum exceeding fifty pounds, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of twenty pounds per centum per annum, and shall be liable to disallowance of all or such part of his remuneration as to the Board shall seem just, and to be removed from his office by the Board, and shall be liable to pay any expenses occasioned by reason of his default.

(5.) All payments out of money standing to the credit of the Board of Trade in the Companies Liquidation Account shall be made by the Bank of England in the prescribed manner (*e*).

(6.) No liquidator of a company which is being wound up by order of the Court shall pay any sums received by him as liquidator into his private banking account.

Powers of liquidator (*f*).

12.—(1.) The liquidator of a company which is being wound up by the Court, may, with the sanction either of the Court (*g*) or of the committee of inspection (*h*), carry on the business of the company (*i*), or bring or defend any legal proceedings in the name and on behalf of the company, or exercise any of the powers conferred by section one hundred and fifty-nine or section one hundred and sixty of the Companies Act, 1862.

25 & 26 Vict. c. 89.

(2.) The liquidator of any such company may, without the sanction of the Court or of the committee of inspection, exercise any of the other powers conferred on the liquidator by section ninety-five of the Companies Act, 1862.

(3.) The exercise by the liquidator of the powers referred to in this section shall be subject to the control of the Court, and any creditor or contributory may apply to the Court with respect to any exercise or proposed exercise of any of those powers.

(4.) The liquidator of a company which is being wound up by order of the Court may, with the sanction either of the Court or of the committee of inspection, employ a solicitor (*k*) or other agent to take any proceedings

(*c*) As to the mode of applying, see Rules, 1890, r. 82.

(*d*) See Rules, 1890, r. 81.

(*e*) *I.e.*, as the Board of Trade may from time to time direct. See Rules, 1890, r. 80.

(*f*) See, generally, as to the powers of a liquidator, *ante*, pp. 978 *et seq.*

(*g*) The sanction of the Court may be dispensed with by order. See Companies Act, 1862, § 96.

(*h*) See § 9. If there is no committee of inspection the Official Receiver may act subject to the directions of the Board of Trade, § 9 (9), and Rules, 1890, r. 169.

(*i*) The liquidator must keep a distinct trading account (Rules, 1890, r. 137), and he and the members of the committee are prohibited from purchasing or making a profit from any of the assets (Rules, 1890, rr. 156–159).

(*k*) See Rules, 1890, rr. 29, 31, and 174, and Rules, 1892, r. 28, and *ante*, pp. 871, 872.

or do any business which the liquidator is unable to take or do himself. The sanction aforesaid must be a sanction obtained before the employment, except in cases of urgency, and in such cases it must be shown that no undue delay took place in obtaining the sanction.

Delegation to liquidator of certain powers of Court.

13. General rules may be made for requiring or enabling all or any of the powers and duties conferred and imposed on the Court by sections ninety-one (*l*), ninety-eight, ninety-nine (*m*), one hundred (*n*), one hundred and two (*o*) and one hundred and seven (*p*) of the Companies Act, 1862, to be exercised or performed by the liquidator as an officer of the Court, and subject to the control of the Court.

Provided that the liquidator shall not, without the special leave of the Court, rectify the register of members, and shall not make any call without either the special leave of the Court or the sanction of the committee of inspection.

Power for Official Receiver to apply as to voluntary winding up.

14. Where a company is being wound up voluntarily or subject to the supervision of the Court, the Official Receiver attached to the Court having jurisdiction to wind up the company may present a petition that the company be wound up by the Court, and thereupon, if the Court is satisfied that the voluntary winding up or winding up subject to supervision cannot be continued with due regard to the interests of the creditors or contributories, it may make an order that the company be wound up by the Court (*pp*).

Information as to pending liquidations (*q*).

15.—(1.) If the winding up of a company (*q*) is not concluded (*r*) within one year after its commencement, the liquidator of the company shall, at such intervals as may be prescribed (*s*), until the winding up is concluded, send to the registrar of joint-stock companies a statement in the prescribed form and containing the prescribed particulars with respect to the proceedings in and position of the liquidation (*t*). Any person stating himself in writing to be a creditor or contributory of the company shall be entitled, by himself or by his agent, at all reasonable times, on payment of the prescribed fee, to inspect the statement submitted in pursuance of this section, and to a copy thereof, or extract therefrom. But any person untruthfully so stating himself to be a creditor or contributory shall be guilty of a contempt of Court, and shall be punishable accordingly on the application of the liquidator or of the Official Receiver (*u*).

(*l*) Power to call meetings of creditors and contributories. See, also, § 23 and Rules, 1890, rr. 47–57, and Rules, 1892, r. 25.

(*m*) Settling the list of contributories, Rules, 1890, rr. 88–88, and *ante*, pp. 1034 *et seq.* Rectifying the register, and collecting the assets of the company, and applying them in discharge of the company's liabilities, Rules, 1890, rr. 88 and 89, and *ante*, pp. 991 *et seq.* Power to rectify the register has not been given to the liquidator.

(*n*) Power to require delivery of the property of the company. See Rules, 1890, r. 91, and *ante*, pp. 939 and 981.

(*o*) Power to make calls. See Rules, 1890, rr. 92–95, and *ante*, pp. 1144 *et seq.*

(*p*) Proof of debts. See Rules, 1890, rr. 96 *et seq.*, and *ante*, pp. 991 *et seq.*

(*pp*) See *ante*, p. 860.

(*q*) This section applies to companies which are being wound up voluntarily or under supervision, see *Stock and Share Auction, &c., Co.* [1894], 1 Ch. 736, and *ante*, pp. 946 *et seq.*, 974, and 1192.

(*r*) As to when a winding up is deemed to be concluded, see Rules, 1890, r. 126.

(*s*) Rules, 1890, rr. 127 *et seq.*

(*t*) See Rules 1890, rr. 127 *et seq.*, and forms there referred to.

(*u*) Compare § 7 (6), *ante*.

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be filed and kept by the Board, and the other copy shall be filed with the Court, and each copy shall be open to the inspection of any creditor, or of any person interested.

(5.) The Board of Trade shall cause the account or a summary thereof when audited to be printed, and shall send a printed copy thereof by post to every creditor and contributory (*i*).

Books to be kept by liquidator.

21. Every liquidator of a company which is being wound up by order of the Court shall keep, in manner prescribed, proper books (*k*) in which he shall from time to time cause to be made entries or minutes of proceedings at meetings, and of such other matters as may be prescribed, and any creditor or contributory of the company may, subject to the control of the Court, personally or by his agent inspect any such books.

Release of liquidators.

22.—(1.) When the liquidator of a company which is being wound up by order of the Court has realised all the property of the company, or so much thereof as can, in his opinion, be realised without needlessly protracting the liquidation, and distributed a final dividend (*l*), if any, to the creditors, and adjusted the rights of the contributories between themselves, and made a final return, if any, to the contributories, or has resigned, or has been removed (*m*) from his office, the Board of Trade shall, on his application (*n*), cause a report on his accounts to be prepared, and, on his complying with all the requirements of the Board, shall take into consideration the report, and any objection which may be urged by any creditor, or contributory, or person interested against the release of the liquidator, and shall either grant or withhold the release accordingly, subject nevertheless to an appeal (*o*) to the High Court.

(2.) Where the release of a liquidator is withheld the Court may, on the application of any creditor, or contributory, or person interested, make such order as he thinks just, charging the liquidator with the consequences of any act or default he may have done or made contrary to his duty.

(3.) An order (*p*) of the Board releasing the liquidator shall discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator (*q*), but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact (*r*).

(4.) Where the liquidator has not previously resigned or been removed, his release shall operate as a removal of him from his office.

Discretionary powers of liquidator and control thereof.

23.—(1.) Subject to the provisions of the Companies Acts, the liquidator

(*i*) See Rules, 1890, r. 139.

(*k*) See Rules, 1890, rr. 143, 144.

(*l*) As to notices of dividends, see Rules, 1890, r. 122.

(*m*) As to his removal, see *ante*, p. 970.

(*n*) Before making an application for release the liquidator must give notice to all the creditors who have proved and to the contributories, Rules, 1890, r. 148.

(*o*) The appeal must be brought within 21 days unless the time is extended, Rules, 1890, rr. 170 and 176.

(*p*) The order must be gazetted, Rules, 1890, r. 149.

(*q*) On the release of the liquidator he must deliver all books and documents relating to the office of liquidator to the Official Receiver; until this has been done the release does not take effect, Rules, 1890, r. 141.

(*r*) See *Ex parte Société Cockrill*, 3 Ch. D. 115; *Ex parte Carter*, 8 Ch. D. 731, decided upon a similar clause in the Bankruptcy Act, 1869.

of a company which is being wound up by order of the Court shall, in the administration of the property of the company and in the distribution thereof amongst its creditors, have regard to any directions that may be given by resolution of the creditors or contributories at any general meeting, or by the committee of inspection, and any directions so given by the creditors or contributories at any general meeting shall in case of conflict be deemed to override any directions given by the committee of inspection.

(2.) The liquidator may from time to time summon general meetings (*s*) of the creditors or contributories for the purpose of ascertaining their wishes, and it shall be his duty to summon meetings at such times as the creditors or contributories, by resolution, either at the meeting appointing the liquidator or otherwise, may direct, or whenever requested in writing to do so by one-tenth in value of the creditors or contributories as the case may be (*t*).

(3.) The liquidator may apply to the Court in manner prescribed for directions in relation to any particular matter arising under the winding up (*u*).

(4.) Subject to the provisions of the Companies Acts, the liquidator shall use his own discretion in the management of the estate and its distribution among the creditors.

Appeal to Court against liquidator.

24. If any person is aggrieved (*x*) by any act or decision of the liquidator of a company which is being wound up by order of the Court, he may apply (*y*) to the Court, and the Court may confirm, reverse, or modify the act or decision complained of, and make such order in the premises as it thinks just.

Control of Board of Trade over liquidators.

25.—(1.) The Board of Trade shall take cognisance of the conduct of liquidators of companies which are being wound up by order of the Court, and in the event of any such liquidator not faithfully performing his duties and duly observing all the requirements imposed on him by statute, rules, or otherwise, with respect to the performance of his duties, or in the event of any complaint being made to the Board by any creditor or contributory in regard thereto, the Board shall inquire into the matter, and take such action thereon as may be deemed expedient.

(2.) The Board may at any time require any liquidator of a company which is being wound up by order of the Court to answer any inquiry made by them in relation to any winding up in which the liquidator is engaged, and may, if the Board think fit, apply (*z*) to the Court to examine on oath the liquidator or any other person concerning the winding up.

(3.) The Board may also direct a local investigation to be made of the books and vouchers of the liquidator of any company which is being wound up by order of the Court.

General rules and fees.

26.—(1.) The Lord Chancellor may, with the concurrence of the President

(*s*) For the rules governing such meetings, see Rules, 1890, rr. 47–57, and Rules, 1892, r. 25.

(*t*) As to costs of summoning meetings, see Rules, 1890, r. 51.

(*u*) Rules, 1890, r. 5, and Rules, 1892, rr. 3, 4, and 5.

(*x*) As to who is a person aggrieved, see *Ex parte Official Receiver*, 19 Q. B. Div. 174; *Ex parte Sidebotham*, 14 Ch. Div. 458.

(*y*) Rules, 1890, r. 5, and Rules, 1892, rr. 3, 4, and 5.

(*z*) As to the mode of application under this section see Rules, 1890, r. 171.

of the Board of Trade, make general rules for carrying into effect the objects of this Act (*a*).

(2.) All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act (*b*).

(3.) Any general rule made under this section shall not come into operation until the expiration of one month after the rule has been made and issued.

(4.) There shall be paid in respect of the proceedings under this Act such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid (*c*).

(5.) All rules made and directions given by the Lord Chancellor under the foregoing provisions of this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chancery Court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and the word "registrar" for the words "chief clerk," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that Court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

Officers and remuneration.

27.—(1.) The Board of Trade may, with the approval of the Treasury, appoint such additional officers (*d*) as may be required by the Board for the execution of this Act, and may dismiss any person so appointed.

(2.) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may vary, increase, or diminish such remuneration as they may think fit.

(3.) The Lord Chancellor, with the concurrence of the Treasury, shall

(*a*) For the rules made under this section, see *infra*, Appendix VII.

(*b*) As to the effect of such a provision, see *Institute of Patent Agents* v. *Lockwood* [1894], A. C. 347.

(*c*) See the orders as to fees, *infra*, Appendix VII.

(*d*) By an order dated the 1st January, 1891, "the Board of Trade, with the concurrence of the Treasury, have assigned the matters arising in the execution of the said Act by the Board of Trade to the bankruptcy department of the said Board, and have appointed Mr. John Smith, the Inspector-General in Bankruptcy, to be Inspector-General in Companies Liquidation. The duties of the Inspector-General in Companies Liquidation will include the general direction of the said Department as regards the said matters so assigned to it, under the control of the Board of Trade, and he will also be liable to discharge any other duties connected with Companies Liquidation which the Board of Trade may from time to time assign to him.

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direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may vary, increase, or diminish such remuneration as he may think fit.

Annual accounts of receipts and expenditure in respect of winding-up proceedings. 38 & 39 Vict. c. 77.

28.—(1.) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section.

(2.) The accounts of the Board of Trade under this Act shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade shall make such returns and give such information as the Treasury direct.

Returns by officers.

29.—(1.) The officers of the Courts acting in the winding up of companies shall make to the Board of Trade such returns of the business of their respective Courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches (*e*).

(2.) The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act to be prepared and laid before both Houses of Parliament.

Proceedings of Board of Trade.

30.—(1.) All documents purporting to be orders or certificates made or issued by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2.) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade, shall be conclusive evidence of the fact so certified (*f*).

Application of Act.

31.—(1.) This Act shall not, except where it is expressed to have a more extended application (*g*), apply to any company which is being wound up in pursuance of an order made before the commencement of this Act.

(2.) For the purposes of this Act a company shall not be deemed to be wound up by order of the Court if the order is to continue a winding up under the supervision of the Court.

(3.) This Act shall not apply to any company unless the registered (*h*) office of the company is situate in England or Wales.

Interpretation of terms.

32.—(1.) In this Act, unless the context otherwise requires,—

"The Companies Acts" means the Companies Act, 1862, and the Acts amending the same.

"General rules" means general rules made under this Act, and includes forms.

"Prescribed" means prescribed by general rules.

(*e*) See Rules, 1890, rr. 150 and 151.

(*f*) See, also, Rules, 1890, r. 175.

(*g*) See §§ 10, 14, and 15.

(*h*) See, *infra*, § 32 (3).

of the Board of Trade, make general rules for carrying into effect the objects of this Act (*a*).

(2.) All general rules made under the foregoing provisions of this section shall be laid before Parliament within three weeks after they are made, if Parliament is then sitting, and if Parliament is not sitting, within three weeks after the beginning of the next session of Parliament, and shall be judicially noticed, and shall have effect as if enacted by this Act (*b*).

(3.) Any general rule made under this section shall not come into operation until the expiration of one month after the rule has been made and issued.

(4.) There shall be paid in respect of the proceedings under this Act such fees as the Lord Chancellor may, with the sanction of the Treasury, direct, and the Treasury may direct by whom and in what manner the same are to be collected and accounted for, and to what account they are to be paid (*c*).

(5.) All rules made and directions given by the Lord Chancellor under the foregoing provisions of this section shall be adopted by the authority for the time being empowered to make rules for regulating the practice or procedure in the Chancery Court of the County Palatine of Lancaster, but as so adopted shall have effect with the substitution of the words "vice-chancellor" for the word "judge," and the word "registrar" for the words "chief clerk," and of the words "chambers of the registrar" for the words "chambers of the judge" and "judge's chambers," and any directions as to the remuneration to be allowed to officers of that Court in respect of proceedings under this Act shall be subject to the sanction of the Chancellor of the Duchy and County Palatine of Lancaster.

Officers and remuneration.

27.—(1.) The Board of Trade may, with the approval of the Treasury, appoint such additional officers (*d*) as may be required by the Board for the execution of this Act, and may dismiss any person so appointed.

(2.) The Board of Trade, with the concurrence of the Treasury, shall direct whether any and what remuneration is to be allowed to any officer of, or person attached to, the Board of Trade, performing any duties under this Act, and may vary, increase, or diminish such remuneration as they may think fit.

(3.) The Lord Chancellor, with the concurrence of the Treasury, shall

(*a*) For the rules made under this section, see *infra*, Appendix VII.

(*b*) As to the effect of such a provision, see *Institute of Patent Agents* v. *Lockwood* [1894], A. C. 347.

(*c*) See the orders as to fees, *infra*, Appendix VII.

(*d*) By an order dated the 1st January, 1891, "the Board of Trade, with the concurrence of the Treasury, have assigned the matters arising in the execution of the said Act by the Board of Trade to the bankruptcy department of the said Board, and have appointed Mr. John Smith, the Inspector-General in Bankruptcy, to be Inspector-General in Companies Liquidation. The duties of the Inspector-General in Companies Liquidation will include the general direction of the said Department as regards the said matters so assigned to it, under the control of the Board of Trade, and he will also be liable to discharge any other duties connected with Companies Liquidation which the Board of Trade may from time to time assign to him.

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direct whether any and what remuneration is to be allowed to any person (other than an officer of the Board of Trade) performing any duties under this Act, and may vary, increase, or diminish such remuneration as he may think fit.

Annual accounts of receipts and expenditure in respect of winding-up proceedings.

28.—(1.) The Treasury shall annually cause to be prepared and laid before both Houses of Parliament an account for the year ending with the thirty-first day of March, showing the receipts and expenditure during that year in respect of proceedings under this Act, whether commenced under this or any previous Act, and the provisions of section twenty-eight of the Supreme Court of Judicature Act, 1875, shall apply to the account as if the account had been required by that section. 38 & 39 Vict. c. 77.

(2.) The accounts of the Board of Trade under this Act shall be audited in such manner as the Treasury direct, and, for the purpose of the account to be laid before Parliament, the Board of Trade shall make such returns and give such information as the Treasury direct.

Returns by officers.

29.—(1.) The officers of the Courts acting in the winding up of companies shall make to the Board of Trade such returns of the business of their respective Courts and offices, at such times and in such manner and form as may be prescribed, and from such returns the Board of Trade shall cause books to be prepared which shall, under the regulations of the Board, be open for public information and searches (*e*).

(2.) The Board of Trade shall also cause a general annual report of all matters, judicial and financial, within this Act to be prepared and laid before both Houses of Parliament.

Proceedings of Board of Trade.

30.—(1.) All documents purporting to be orders or certificates made or issued by the Board of Trade and to be sealed with the seal of the Board, or to be signed by a secretary or assistant secretary of the Board, or any person authorised in that behalf by the President of the Board, shall be received in evidence and deemed to be such orders or certificates without further proof unless the contrary is shown.

(2.) A certificate signed by the President of the Board of Trade that any order made, certificate issued, or act done, is the order, certificate, or act of the Board of Trade, shall be conclusive evidence of the fact so certified (*f*).

Application of Act.

31.—(1.) This Act shall not, except where it is expressed to have a more extended application (*g*), apply to any company which is being wound up in pursuance of an order made before the commencement of this Act.

(2.) For the purposes of this Act a company shall not be deemed to be wound up by order of the Court if the order is to continue a winding up under the supervision of the Court.

(3.) This Act shall not apply to any company unless the registered (*h*) office of the company is situate in England or Wales.

Interpretation of terms.

32.—(1.) In this Act, unless the context otherwise requires,—

"The Companies Acts" means the Companies Act, 1862, and the Acts amending the same.

"General rules" means general rules made under this Act, and includes forms.

"Prescribed" means prescribed by general rules.

(*e*) See Rules, 1890, rr. 150 and 151.

(*f*) See, also, Rules, 1890, r. 175.

(*g*) See §§ 10, 14, and 15.

(*h*) See, *infra*, § 32 (3).

APPENDIX VI.

"Stannaries Court" means the Court of the Vice-Warden of the Stannaries (*i*).

25 & 26 Vict. c. 89.

(2.) In Part IV. of the Companies Act, 1862, and in this Act the expression "the Court," when used in relation to a company shall, unless the contrary intention appears, mean the Court having jurisdiction under this Act to wind up the company.

(3.) For the purposes of this Act the expression "registered office of a company" shall mean the place which has been the registered office of the company for the greater part of the six months immediately preceding the presentation of the petition for winding up the company, and shall include, in the case of an unregistered company, any place which in pursuance of section one hundred and ninety-nine of the Companies Act, 1862, is to be deemed the registered office of the company for the purpose of the winding up thereof.

Repeal.

33. The enactments mentioned in the Second Schedule to this Act are hereby repealed, as to England and Wales, to the extent appearing in the third column of that schedule.

Commencement of Act.

34. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-one.

Short title.

35.—(1.) This Act may be cited as the Companies (Winding-up) Act, 1890.

(2.) This Act and the Companies Acts, 1862 to 1886, may be cited together as the Companies Acts, 1862 to 1890.

SCHEDULES.

FIRST SCHEDULE.

MEETINGS OF CREDITORS AND CONTRIBUTORIES (*k*).

Section 6.

(1.) The meetings of creditors and contributories (*l*) shall be held within twenty-one days after the date of the winding-up order, or within such further time as the Court may approve (*m*), unless a special manager has been appointed, in which case such meetings shall be held within one month from the date of such order or within such further time as aforesaid (*n*).

(2.) The Official Receiver of the company shall summon the meeting by giving not less than seven days' notice of the time and place thereof in the London Gazette and in a local paper. Notice of such meeting shall also

(*i*) The jurisdiction of the Stannaries Court is now vested in the County Court of Cornwall, see Stannaries Court Abolition Act, 1896, and the order of the Lord Chancellor thereunder. The winding-up jurisdiction is vested in the County Court at Truro, see County Courts Bankruptcy and Companies Winding-up Jurisdiction Order, June, 1899, printed *infra*.

(*k* The rules comprised in this schedule may be altered by general rules, see *ante*, § 6 (2); they appear to apply only to the first meetings. For the rules governing other meetings, see Rules, 1890, rr. 47–57, and Rules, 1892, r. 25.

(*l*) Including alleged contributories, Comp. Act, 1862, § 74. Directors and officers must attend if required to do so by the Official Receiver, Rules, 1890, r. 43.

(*m*) See ib. r. 45.

(*n*) See as to the notices to be given of these first meetings and the times for holding them, ib. rr. 43–46.

be sent by post to every person appearing by the company's books to be a creditor of the company and to every member of the company.

(3.) The Official Receiver shall also, as soon as practicable, send to each creditor mentioned in the company's statement of affairs, and to each person appearing from the company's books, or otherwise, to be a contributory of the company, a summary of the company's statement of affairs (*o*), including the causes of its failure, and any observations thereon which the Official Receiver may think fit to make; but the proceedings at any such meeting shall not be invalidated by reason of any summary or notice required by these rules not having been sent or received before the meeting.

(4.) The meeting shall be held at such place as is in the opinion of the Official Receiver most convenient for the majority of the creditors and contributories.

(5.) The Official Receiver, or some person nominated by him, shall be the chairman at the meetings.

(6.) A person shall not be entitled to vote as a creditor unless he has duly proved (*p*) a debt to be due to him from the company, and the proof has been duly lodged before the time appointed for the meeting (*q*).

(7.) A creditor shall not vote in respect of any unliquidated or contingent debt or any debt the value of which is not ascertained (*r*).

(8.) For the purpose of voting, a secured creditor shall, unless he surrenders his security, state in his proof the particulars of his security, the date when it was given, and the value at which he assesses it, and shall be entitled to vote only in respect of the balance (if any) due to him, after deducting the value of his security. If he votes in respect of his whole debt he shall be deemed to have surrendered his security, unless the Court on application is satisfied that the omission to value the security has arisen from inadvertence (*s*).

(9.) A creditor shall not vote in respect of any debt on or secured by a current bill of exchange or promissory note (*t*) held by him, unless he is willing to treat the liability to him thereon of every person who is liable thereon antecedently to the company, and against whom a receiving order in bankruptcy has not been made, as a security in his hands, and to estimate the value thereof, and for the purposes of voting, but not for the purposes of dividend, to deduct it from his proof.

(*o*) See § 7 and Rules, 1890, r. 45.

(*p*) As to the proof of debts, see ib. rr. 96–109.

(*q*) See also ib. r. 108.

(*r*) "A contingent debt refers to a case where there is a doubt whether there will be any debt at all; 'a debt the value of which is not ascertained,' means a debt the amount of which cannot be estimated until the happening of some future event; and 'an unliquidated debt' includes not only all cases of damages to be ascertained by a jury, but beyond that extends to any debt where the creditor fairly admits that he cannot state the amount," *per* Mellish, L.J., *Ex parte Ruffle*, 8 Ch. p. 1001, a decision on similar words in the Bankruptcy Act, 1869, § 16 (3). See also *Ex parte Pearce*, 13 Ch. Div. 262; and *Canadian-Pacific Colonisation Corp.*, W. N. 1891, 122.

(*s*) As to amendment of proof, see *Ex parte Huddersfield Banking Co.* [1892], 2 Ch. 417; *Ex parte Piers* [1898], 1 Q. B. 627; *Ex parte Buenos Ayres, &c., Co.* [1901], 1 K. B. 655.

(*t*) The bills must be produced. See Rules, 1890, r. 107.

(10.) It shall be competent to the Official Receiver, or to the liquidator, within twenty-eight days after a proof estimating the value of a security as aforesaid had been made use of in voting at any meeting, to require the creditor to give up the security for the benefit of the creditors generally on payment of the value so estimated, with an addition thereto of twenty per centum (*u*). Provided, that where a creditor has put a value on such security, he may, at any time before he has been required to give up such security as aforesaid, correct such valuation by a new proof, and deduct such new value from his debt; but in that case such addition of twenty per centum shall not be made if the liquidator requires the security to be given up.

(11.) The chairman of the meeting shall have power to admit or reject a proof for the purpose of voting, but his decision shall be subject to appeal (*x*) to the Court. If he is in doubt whether the proof of a creditor should be admitted or rejected he shall mark the proof as objected to, and shall allow the creditor to vote, subject to the vote being declared invalid in the event of the objection being sustained.

(12.) A creditor or a contributory may vote either in person or by proxy (*y*).

(13.) Every instrument of proxy shall be in the prescribed form (*z*), and shall be issued by an Official Receiver, or by the liquidator of the company, and every written part thereof shall be in the handwriting of the person giving the proxy, or of any manager or clerk or other person in his regular employment, or of a commissioner to administer oaths in the Supreme Court of Judicature in England.

(14.) General and special forms of proxy shall be sent to the creditors and contributories with the notice summoning the meeting, and neither the name nor description of the Official Receiver or of any other person shall be printed or inserted in the body of any instrument of proxy before it is so sent.

(15.) A creditor or a contributory may give a general proxy to his manager or clerk, or any other person in his regular employment. In such case the instrument of proxy shall state the relation in which the person to act thereunder stands to the creditor or contributory.

(16.) A creditor or a contributory may give a special proxy to any person to vote at any specified meeting, or adjournment thereof—

(a.) for or against the appointment or continuance in office of any specified person as liquidator or member of the committee of inspection, and

(b.) on all questions relating to any matter other than those above referred to and arising at any specified meeting or adjournment thereof.

(*u*) See *Ex parte Saffery* [1899], 2 Q. B. 549. As to withdrawing a proof, see *Ex parte Buenos Ayres, &c., Co.* [1901], 1 K. B. 656.

(*x*) See *Canadian Pacific Colonisation Corp.*, W. N. 1891, 122. The appeal must be brought within twenty-one days. See (5) *ante*, and Rules, 1890, rr. 111, 115, and 170, unless the time be extended under r. 176.

(*y*) See generally as to proxies, Rules, 1890, rr. 123–125, and *ante*, pp. 429, 430. As to the power of the committee of the estate of a lunatic to appoint proxies, see *Ex parte Wood*, 10 Ch. D. 554; and Lunacy Act, 1890, § 120. As to mode of counting votes, see Rules. 1892, r. 25.

(*z*) For the form of proxies, see Rules, 1890, rr. 123–125, and forms 73 and 74.

(17.) A proxy shall not be used unless it is deposited with the Official Receiver before the meeting at which it is to be used (*a*).

(18.) Where it appears to the satisfaction of the Court that any solicitation has been used by or on behalf of a liquidator in obtaining proxies or in procuring the appointment of liquidator, except by the direction of a meeting of creditors or contributories, the Court shall have power, if it think fit, to order that no remuneration shall be allowed to the person by whom or on whose behalf such solicitation may have been exercised, notwithstanding any resolution of the committee of inspection or of the creditors or contributories to the contrary.

(19.) A creditor or a contributory may appoint the Official Receiver to act in manner prescribed as his general or special proxy (*b*).

(20.) The chairman of the meeting may, with the consent of the meeting, adjourn (*c*) the meeting from time to time and from place to place.

(21.) A meeting shall not be competent to act for any purpose except the election of a chairman, the proving of debts, and the adjournment of the meeting, unless there are present or represented thereat, at least three creditors or contributories, or all the creditors or contributories if their number does not exceed three.

(22.) If within half an hour from the time appointed for the meeting a quorum (*d*) of creditors or contributories is not present or represented, the meeting shall be adjourned to the same day in the following week at the same time and place, or to such other day as the chairman may appoint, not being less than seven or more than twenty-one days.

(23.) The chairman of the meeting shall cause minutes of the proceedings at the meeting to be drawn up, and fairly entered in a book kept for that purpose, and the minutes shall be signed by him or by the chairman of the next ensuing meeting (*e*).

(24.) No person acting either under a general or a special proxy shall vote in favour of any resolution which would directly or indirectly place himself, his partner or employer, in a position to receive any remuneration out of the estate of the company otherwise than as a creditor rateably with the other creditors of the company: Provided that where any person holds special proxies to vote for an application to the Court in favour of the appointment of himself as liquidator he may use the said proxies and vote accordingly.

(*a*) See, now, Rules, 1892, r. 30.

(*b*) If the Official Receiver cannot be present, he may depute some person under his official control to use the proxy as he may direct, Rules, 1890, r. 124.

(*c*) The adjourned meeting is to be held at the original place of meeting, unless otherwise specified, ib. r. 56.

(*d*) Only those persons who are entitled to vote can be reckoned. See ib. r. 57.

(*e*) As to the notice to be given of resolutions, see ib. r. 54. These minutes must be entered in the Record Book, ib. r. 143.

Section 31.

SECOND SCHEDULE.

ENACTMENTS REPEALED AS TO ENGLAND AND WALES.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89	The Companies Act, 1862.	Section eighty-one (*f*). In section ninety-two the words "The Court shall determine whether any and what security is to be given by any official liquidator on his appointment" (*g*). Section ninety-seven (*h*). Section one hundred and sixty-five (*i*).
30 & 31 Vict. c. 131	The Companies Act, 1867.	Sections forty-one to forty-six (*k*).

DIRECTORS' LIABILITY ACT, 1890 (*l*).

53 & 54 VICT. CAP. 64.

An Act to amend the Law relating to the Liability of Directors and others for Statements in Prospectuses and other Documents soliciting applications for Shares or Debentures.

[18*th August*, 1890.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Directors' Liability Act, 1890.

Construction.

2. This Act shall be construed as one with the Companies Acts, 1862 to 1890.

Liability for statements in prospectus.

3.—(1.) Where after the passing of this Act a prospectus or notice invites persons to subscribe for shares in or debentures or debenture stock of a company (*m*), every person who is a director of the company at the time of the issue of the prospectus or notice, and every person who having authorised such naming of him is named in the prospectus or notice as a director of the company or as having agreed to become a director of the company either immediately or after an interval of time, and every promoter (*n*) of the company, and every person who has authorised the issue of the prospectus or notice, shall be liable to pay compensation to all persons who shall subscribe for any shares, debentures,

(*f*) Replaced by § 1.
(*g*) Replaced by § 4 (3) and r. 67.
(*h*) Replaced by § 12 (4).
(*i*) Replaced by § 10.
(*k*) Replaced by §§ 1 and 3.
(*l*) See *ante*, pp. 115 *et seq.*
(*m*) See further as to prospectuses, the Comp. Act, 1900, §§ 9 and 10, and *ante*, pp. 44 *et seq.* and 86 *et seq.*
(*n*) See *infra*, sub-sect. (2).

or debenture stock on the faith of such prospectus or notice for the loss or damage they may have sustained by reason of any untrue statement in the prospectus or notice, or in any report or memorandum appearing on the face thereof, or by reference incorporated therein or issued therewith, unless it is proved—

(a.) With respect to every such untrue statement not purporting to be made on the authority of an expert (*o*), or of a public official document or statement, that he had reasonable ground to believe, and did up to the time of the allotment of the shares, debentures, or debenture stock, as the case may be, believe, that the statement was true; and

(b.) With respect to every such untrue statement purporting to be a statement by or contained in what purports to be a copy of or extract from a report or valuation of an engineer, valuer, accountant, or other expert, that it fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of or extract from the report or valuation. Provided always, that notwithstanding that such untrue statement fairly represented the statement made by such engineer, valuer, accountant, or other expert, or was a correct and fair copy of *an extract from the report or valuation, such director, person named, promoter, or other person, who authorised the issue of the prospectus or notice as aforesaid, shall be liable to pay compensation as aforesaid if it be proved that he had no reasonable ground to believe that the person making the statement, report, or valuation was competent to make it; and

* *Sic.* Qu. "or."

(c.) With respect to every such untrue statement purporting to be a statement made by an official person or contained in what purports to be a copy of or extract from a public official document, that it was a correct and fair representation of such statement or copy of or extract from such document,

or unless it is proved that having consented to become a director of the company he withdrew his consent before the issue of the prospectus or notice, and that the prospectus or notice was issued without his authority or consent, or that the prospectus or notice was issued without his knowledge or consent, and that on becoming aware of its issue he forthwith gave reasonable public notice that it was so issued without his knowledge or consent, or that after the issue of such prospectus or notice and before allotment thereunder, he, on becoming aware of any untrue statement therein, withdrew his consent thereto, and caused reasonable public notice of such withdrawal, and of the reason therefor, to be given.

(2.) A promoter in this section means a promoter who was a party to the preparation of the prospectus or notice, or of the portion thereof containing such untrue statement, but shall not include any person by reason of his acting in a professional capacity for persons engaged in procuring the formation of the company.

(3.) Where any company existing at the passing of this Act, which has issued shares or debentures, shall be desirous of obtaining further capital by subscriptions for shares or debentures, and for that purpose shall issue

(*o*) See *infra*, sub-sect. (4).

a prospectus or notice, no director of such company shall be liable in respect of any statement therein, unless he shall have authorised the issue of such prospectus or notice, or have adopted or ratified the same.

(4.) In this section the word "expert" includes any person whose profession gives authority to a statement made by him.

Indemnity where name of person has been improperly inserted as a director.

4. Where any such prospectus or notice as aforesaid contains the name of a person as a director of the company, or as having agreed to become a director thereof, and such person has not consented to become a director, or has withdrawn his consent before the issue of such prospectus or notice, and has not authorised or consented to the issue thereof, the directors of the company, except any without whose knowledge or consent the prospectus or notice was issued, and any other person who authorised the issue of such prospectus or notice shall be liable to indemnify the person named as a director of the company, or as having agreed to become a director thereof as aforesaid, against all damages, costs, charges, and expenses to which he may be made liable by reason of his name having been inserted in the prospectus or notice, or in defending himself against any action or legal proceedings brought against him in respect thereof.

Contribution from co-directors, &c.

5. Every person who by reason of his being a director, or named as a director or as having agreed to become a director, or of his having authorised the issue of the prospectus or notice, has become liable to make any payment under the provisions of this Act, shall be entitled to recover contribution, as in cases of contract, from any other person who, if sued separately, would have been liable to make the same payment.

THE COMPANIES (WINDING-UP) ACT, 1893.

56 & 57 VICT. CAP. 58.

An Act to amend section ten of the Companies (Winding-up) Act, 1890.
[22*nd September*, 1893.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Effect of order under 53 & 54 Vict. c. 63, s. 10. 46 & 47 Vict. c. 52.

1. An order for payment of money made by the Court under section ten of the Companies (Winding-up) Act, 1890, shall be deemed to be a final judgment within the meaning of paragraph (g) of sub-section one of section four of the Bankruptcy Act, 1883.

Short title.

2. This Act may be cited as the Companies (Winding-up) Act, 1893.

THE STANNARIES COURT (ABOLITION) ACT, 1896.

59 & 60 VICT. CAP. 45.

An Act for abolishing the Court of the Vice-Warden of the Stannaries.
[14*th August*, 1896.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,

in this present Parliament assembled, and by the authority of the same, as follows:

Abolition of Vice-Warden's Court.

1.—(1.) On the commencement of this Act the Court of the Vice-Warden of the Stannaries shall cease to exist, except for the purpose of continuing and concluding proceedings pending in that Court at that date, and as from that date all jurisdiction and powers of the said Court and its officers shall, except as aforesaid, be transferred to and vested in such of the County Courts as the Lord Chancellor may by order direct (*p*), and be exercised subject to and in accordance with rules of Court for regulating the procedure in County Courts.

(2.) Provision may be made by order of the Lord Chancellor—

(a.) for determining by to or before what officer, or in what office, may be done anything required to be done by, to, or before any officer or in any office of the said Court of the Vice-Warden;

(b.) for transferring to a County Court any proceedings pending in the said Court at the commencement of this Act;

(c.) for determining the place of sitting for the exercise of any jurisdiction transferred by this Act;

(d.) with respect to the use and disposal of any property which at the commencement of this Act is held for the use of the said Court or of any officer of the said Court, and of any room or building which at that date is appropriated for the use of the said Court or of the Vice-Warden, officers, and suitors thereof; and

(e.) with respect to the custody of any records which at that date are under the custody of the said Court.

Pensions and remuneration.

2. There shall be paid to the persons who are at the commencement of this Act the Vice-Warden and officers of the Court of the Vice-Warden of the Stannaries such pensions, and on such conditions, and out of such funds (including the funds mentioned in section twenty-nine of the Stannaries Act, 1887, and any other funds available for the purpose), as may be fixed by the Treasury with the concurrence of His Royal Highness the Prince of Wales and Duke of Cornwall, regard being had to the date and form of appointment, and salary attached thereto, and to the nature and length of the services of those persons and to the amount and nature of the funds available for their pensions.

50 & 51 Vict. c. 43.

Explanation of references to Stannaries Court.

3. References in any unrepealed enactment to mines subject to the jurisdiction of the Court of the Vice-Warden of the Stannaries, or within the cognisance of the said Vice-Warden, shall be construed as applying to mines which would have been subject to the jurisdiction of the said Court if it had not been abolished.

Reference of certain disputes to arbitration.

4.—(1.) In the event of any dispute arising between—

(a.) any two or more mining companies; or

(b.) any mining company and His Royal Highness the Prince of Wales and Duke of Cornwall, or any person having any estate or interest in the mine worked by or leased to that mining company;

(*p*) See the Order of the Lord Chancellor hereunder in Appendix VII., and as to the winding-up jurisdiction, see the County Courts Bankruptcy and Companies Winding-up Jurisdiction Order, June, 1899, also printed *infra*. For the rules regulating the procedure under this Act, see the County Court Stannaries Jurisdiction Rules, 1897, embodied in the County Court Rules as Order Lc.

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a judge of a County Court exercising the jurisdiction of the Stannaries Court may, on the application of any party to the dispute, order that the matter in dispute be tried before himself or before an arbitrator agreed on by the parties or an officer of the Court, and the Arbitration Act, 1889, shall apply to any such reference.

52 & 53 Vict. c. 49.

(2.) For the purposes of this section the expression "mining company" shall mean any person or body of persons engaged in or formed for working mines within the Stannaries.

Repeal.

5. The enactments described in the schedule to this Act are hereby repealed to the extent mentioned in the third column of that schedule.

Provided that nothing in this repeal shall affect any proceedings pending in the Court of the Vice-Warden of the Stannaries at the commencement of this Act, or any appeal from the said Court pending at that date.

Commencement of Act.

6. This Act shall come into operation on the first day of January one thousand eight hundred and ninety-seven.

Short title.

7. This Act may be cited as the Stannaries Court (Abolition) Act, 1896.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
16 Chas. 1, c. 15.	An Act against diverse Incroachments and Oppressions in the Stannaries Courts.	The whole Act.
6 & 7 Will. 4, c. 106.	The Stannaries Act, 1836.	The whole Act except sections four, six, and seven.
2 & 3 Vict. c. 58.	An Act to make further provision for the administration of justice and for improving the practice and proceedings in the Courts of the Stannaries of Cornwall, and for the prevention of frauds by workmen employed in mines within the county of Cornwall.	The whole Act.
7 & 8 Vict. c. 65.	An Act to enable the Council of His Royal Highness Albert Edward, Prince of Wales, to sell and exchange lands and enfranchise copyholds, parcel of the possessions of the Duchy of Cornwall, to purchase other lands, and for other purposes.	Section forty.

SCHEDULE—(*continued*).

Session and Chapter.	Title or Short Title.	Extent of Repeal.
11 & 12 Vict. c. 83.	An Act to confirm the Awards of Assessionable Manors Commissioners, and for other purposes relating to the Duchies of Cornwall and Lancaster.	Sections seven to eleven, and section thirteen.
18 & 19 Vict. c. 32.	An Act to amend and extend the jurisdiction of the Stannaries Court.	The whole Act, except sections one and thirty-one.
25 & 26 Vict. c. 89.	The Companies Act, 1862.	Section eighty-three, from "and the vice-warden" to end of section, sections one hundred and eight and one hundred and sixteen, section one hundred and twenty-four from "Provided" to the end of the section, and section one hundred and seventy-two.
32 & 33 Vict. c. 19.	The Stannaries Act, 1869.	Sections twenty-seven to thirty-three, and thirty-eight to forty-four.
50 & 51 Vict. c. 43.	The Stannaries Act, 1887.	Sections eight, twenty-eight, thirty, thirty-two, and thirty-three.

PREFERENTIAL PAYMENTS IN BANKRUPTCY AMENDMENT ACT, 1897 (*q*).

60 & 61 VICT. CAP. 19.

An Act to amend the Law regarding Preferential Payments in the case of Companies. [15*th July*, 1897.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Preferential Payments in Bankruptcy Amendment Act, 1897. Short title.

(*q*) See *ante*, pp. 999, 1000.

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Priority of certain debts. 25 & 26 Vict. c. 89. 51 & 52 Vict. c. 62.

2. In the winding up of any company under the Companies Act, 1862, and the Acts amending the same, the debts mentioned in section one of the Preferential Payments in Bankruptcy Act, 1888 (r), shall, so far as the assets of the company available for payment of general creditors may be insufficient to meet them, have priority over the claims of holders of debentures or debenture stock under any floating charge created by such company, and shall be paid accordingly out of any property comprised in or subject to such charge.

Payment of debts out of assets in certain cases.

3. In case a receiver is appointed on behalf of the holders of any debentures or debenture stock of a company secured by a floating charge, or in case possession is taken by or on behalf of such debenture holders of any property comprised in or subject to such charge, then and in either of such cases, if the company is not at the time in course of being wound up, the debts mentioned in section one of the said Preferential Payments Act shall be paid forthwith out of any assets coming to the hands of the receiver, or other person taking possession as aforesaid, in priority to any claim for principal or interest in respect of such debentures or debenture stock. And the periods of time mentioned in the said Act shall be reckoned from the date of the appointment of the receiver or possession being taken as aforesaid, as the case may be. But any payments made under this section shall be recouped as far as may be out of the assets of the company available for payment of general creditors.

Application to Ireland. 52 & 53 Vict. c. 60. 51 & 52 Vict. c. 62.

4. In the application to Ireland of this Act the Preferential Payments in Bankruptcy (Ireland) Act, 1889, shall be substituted for the Preferential Payments in Bankruptcy Act, 1888, and in particular section four of the said Act of 1889 shall be substituted for section one of the said Act of 1888.

Extent of Act.

5. This Act shall not extend to Scotland.

THE COMPANIES ACT, 1898.

61 & 62 VICT. CAP. 26.

An Act to amend the Companies Act, 1867 (s).

[*2nd August*, 1898.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Court empowered to grant relief for non-compliance with 30 & 31 Vict. c. 131, § 25.

1.—(1.) Whenever, before or after the commencement of this Act, any shares in the capital of any company under the Companies Acts, 1862 and 1890, credited as fully or partly paid up shall have been or may be issued for a consideration other than cash, and at or before the issue of such shares no contract or no sufficient contract is filed with the Registrar of Joint Stock Companies, in compliance with section twenty-five of the

(r) See *ante*, pp. 998, 999, and 1368.

(s) See *ante*, pp. 572 and 1096. An order may still be made under this Act, notwithstanding the repeal of § 25 of the Companies Act, 1867, by the Companies Act, 1900. See *Burney's New Cross Brewery Co., Ld.* [1901], 1 Ch. 637.

Companies Act, 1867, the company or any person interested in such shares or any of them may apply to the Court for relief, and the Court, if satisfied that the omission to file a contract or sufficient contract was accidental or due to inadvertence, or that for any reason it is just and equitable to grant relief, may make an order for the filing with the registrar of a sufficient contract in writing, and directing that on such contract being filed within a specified period it shall, in relation to such shares, operate as if it had been duly filed with the registrar aforesaid before the issue of such shares.

(2.) Any such application may be made in the manner in which an application to rectify the register of members may be made under section thirty-five of the Companies Act, 1862, and either before or after an order has been made or an effective resolution has been passed for the winding up of such company, and either before or after the commencement of any proceedings for enforcing the liability on such shares consequent on the omission aforesaid, and any such application shall, if not made by the company, be served on the company. 25 & 26 Vict. c. 89.

(3.) Any such order may be made on such terms and conditions as the Court may think fit, and the Court may make such order as to costs as it deems proper, and may direct that an office copy of the order shall be filed with the registrar aforesaid, and the order shall in all respects have full effect.

(4.) Where the Court in any such case is satisfied that the filing of the requisite contract would cause delay or inconvenience, or is impracticable, it may, in lieu thereof, direct the filing of a memorandum in writing, in a form approved by the Court, specifying the consideration for which the shares were issued, and may direct that on such memorandum being filed within a specified period it shall in relation to such shares operate as if it were a sufficient contract in writing within the meaning of section twenty-five of the Companies Act, 1867, and had been duly filed with the registrar aforesaid before the issue of such shares. The memorandum shall before the filing thereof be stamped with the same amount of *ad valorem* stamp duty as would be chargeable upon the requisite contract unless the contract has been produced to the registrar duly stamped, or unless the registrar is otherwise satisfied that the contract was duly stamped.

Jurisdiction cumulative.

2. The jurisdiction by the Act given to the Court is not by implication to curtail or derogate from its jurisdiction to grant relief in any such case under section thirty-five of the Companies Act, 1862, or otherwise.

Short title and construction.

3. This Act may be cited as the Companies Act, 1898, and shall be read with the Companies Acts, 1862 to 1893.

THE COMPANIES ACT, 1900.

63 & 64 VICT. CAP. 48.

An Act to amend the Companies Acts.

[*8th August*, 1900.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons,

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in this present Parliament assembled, and by the authority of the same, as follows:

Incorporation and Objects.

Conclusiveness of certificate of incorporation.

1.—(1.) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requisitions of the Companies Acts in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorised to be registered and duly registered under the Companies Acts (*t*).

(2.) A statutory declaration by a solicitor of the High Court engaged in the formation of the company or by a person named in the articles of association as a director or secretary of the company of compliance with all or any of the said requisitions shall be produced to the registrar, and the registrar may accept this declaration as sufficient evidence of such compliance (*u*).

(3.) The incorporation of a company shall take effect from the date of incorporation mentioned in the certificate of incorporation.

(4.) This section applies to all certificates of incorporation, whether given before or after the passing of this Act.

Appointment and Qualification of Director (x).

Restrictions on appointment or advertisement of director.

2.—(1.) A person shall not be capable of being appointed director (*y*) of a company by the articles of association, and shall not be named as a director or proposed director of a company in any prospectus (*y*) issued by or on behalf of the company, unless, before the registration of the articles or the publication of the prospectus as the case may be, he has by himself or by his agent authorised in writing—

(i.) signed and filed with the registrar a consent in writing to act as such director (*z*); and

(ii.) either signed the memorandum of association for a number of shares not less than his qualification (if any), or signed and filed with the registrar a contract in writing to take from the company and pay for his qualification shares (if any).

(2.) On the application for registration of the memorandum and articles of association of a company, the applicant shall deliver to the registrar a list of the persons who have consented to be directors of the company (*a*), and if this list contains the name of any person who has not so consented, the applicant shall be liable to a fine not exceeding fifty pounds (*b*).

(3.) Provided that this section shall not apply to a company registered

(*t*) See *ante*, p. 151, and compare Comp. Act, 1862, §§ 18 and 192.

(*u*) For form of declaration, see order of the Board of Trade, 28th December, 1900, form No. 41, printed *infra*. See, too, § 28.

(*x*) See *ante*, pp. 466, 467, and 1088.

(*y*) See the definition in § 30.

(*z*) See Form No. 42 to order of Board of Trade, 28th December, 1900. If the company does not issue an invitation to the public for shares, see for form of application, ib. Form No. 50.

(*a*) Ib. Form No. 43. If there is no such list, see Form No. 51 to the order of the Board of Trade, dated 15th August, 1901. See, too, § 28.

(*b*) As to recovery of penalties, see Comp. Act, 1862, § 65.

before the commencement of this Act (c), or to a company which does not issue any invitation to the public to subscribe for its shares, or to a prospectus (d) issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business (e).

Qualification of director.

3.—(1.) Without prejudice to the restrictions imposed by the last foregoing section, it shall be the duty of every director (d) who is by the regulations of the company required to hold a specified share qualification, and who is not already qualified, to obtain his qualification within two months after his appointment, or such shorter time as may be fixed by the regulations of the company (f).

(2.) The office of director of a company shall be vacated, if the director does not within two months from the date of his appointment, or within such shorter time as may be fixed by the regulations of the company, obtain his qualification, or if after the expiration of such period or shorter time he ceases at any time to hold his qualification: and a person vacating office under this section shall be incapable of being re-appointed director of the company until he has obtained his qualification.

(3.) If after the expiration of the said period or shorter time any unqualified person acts as director of a company, he shall be liable to pay to the company the sum of five pounds for every day during which he so acts (g).

Allotment (h).

Restriction as to allotment.

4.—(1.) No allotment shall be made of any share capital of a company offered to the public for subscription, unless the following conditions have been complied with, namely,—

(a.) the amount (if any) fixed by the memorandum or articles of association and named in the prospectus as the minimum subscription upon which the directors may proceed to allotment; or

(b.) if no amount is so fixed and named, then the whole amount of the share capital so offered for subscription,

has been subscribed, and the sum payable on application for the amount so fixed and named, or for the whole amount offered for subscription, has been paid to and received by the company.

(2.) The amount so fixed and named and the whole amount aforesaid shall be reckoned exclusively of any amount payable otherwise than in cash, and is in this Act referred to as the minimum subscription.

(3.) The amount payable on application on each share shall not be less than five per cent. of the nominal amount of the share.

(4.) If the conditions aforesaid have not been complied with on the expiration of forty days after the first issue of the prospectus, all money received from applicants for shares shall be forthwith repaid to the applicants without interest, and, if any such money is not so repaid within forty-eight days after the issue of the prospectus, the directors (d) of the company shall be jointly and severally liable to repay that money with interest at the rate of five per centum per annum from the expiration of the forty-eight days: Provided that a director shall not

(c) *I.e.*, 1st January, 1901. See § 35.
(d) See the definition in § 30.
(e) See § 6.
(f) See *ante*, pp. 467 and 1088.
(g) See p. 1400, note (b).
(h) See *ante*, pp. 39–43.

be liable if he proves that the loss of the money was not due to any misconduct or negligence on his part.

(5.) Any condition requiring or binding any applicant for shares to waive compliance with any requirement of this section shall be void (*i*).

(6.) This section, except sub-section (3) thereof, shall not apply to any allotment of shares subsequent to the first allotment of shares offered to the public for subscription.

Effect of irregular allotment.

5.—(1.) An allotment made by a company to an applicant in contravention of the foregoing provisions of this Act shall be voidable at the instance of the applicant within one month after the holding of the statutory meeting of the company (*j*) and not later, and shall be so voidable notwithstanding that the company is in course of being wound up.

(2.) If any director (*k*) of a company knowingly contravenes or permits or authorises the contravention of any of the foregoing provisions of this Act with respect to allotment he shall be liable to compensate the company and the allottee respectively for any loss, damages, or costs which the company or the allottee may have sustained or incurred thereby: Provided that proceedings to recover such loss, damages, or costs shall not be commenced after the expiration of two years from the date of the allotment.

Restrictions on commencement of business.

6.—(1.) A company shall not commence any business or exercise any borrowing powers (*l*) unless—

(a.) shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription (*m*); and

(b.) every director (*k*) of the company has paid to the company on each of the shares taken or contracted to be taken by him (*n*), and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription (*o*); and

(c.) there has been filed with the registrar a statutory declaration by the secretary or one of the directors, in the prescribed form (*p*), that the aforesaid conditions have been complied with.

(2.) The registrar shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(3.) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4.) Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application.

(*i*) See *ante*, p. 124, and compare § 10 (5).

(*j*) See § 12. Section 12 only applies to companies limited by shares. See *ante*, pp. 41, 42.

(*k*) See the definition in § 30.

(*l*) As to this section, see *ante*, pp. 209, 230, 231; and as to calls, *ante*, p. 577.

(*m*) See *ante*, § 4 (2).

(*n*) See *ante*, § 2 (1) (ii.).

(*o*) See *Alexander* v. *Automatic Telephone Co.* [1900], 2 Ch. 56.

(*p*) See Form No. 44 to order of Board of Trade, 28th December, 1900, and see § 28.

(5.) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues (*q*).

(6.) Nothing in this section shall apply to a company registered before the commencement of this Act (*r*).

(7.) This section shall not apply to any company where there is no invitation to the public to subscribe for its shares.

Return as to allotments.

7.—(1.) Whenever a company limited by shares makes any allotment of its shares, the company shall within one month thereafter file with the registrar—

(a.) a return of the allotments (*s*), stating the number and nominal amount of the shares comprised in the allotment, the names, addresses, and descriptions of the allottees, and the amount (if any) paid or due and payable on each share; and

(b.) in the case of shares allotted in whole or in part for a consideration other than cash, a contract in writing constituting the title of the allottee to such allotment, together with any contract of sale, or for services or other consideration in respect of which such allotment was made, such contracts being duly stamped, and a return stating the number and nominal amount of shares so allotted, the extent to which they are to be treated as paid up, and the consideration for which they have been allotted (*t*).

(2.) If default is made in complying with the requirements of this section, every director (*u*), manager, secretary, or other officer of the company, who is knowingly a party to the default, shall be liable to a fine not exceeding fifty pounds for every day during which the default continues.

Commissions, discounts, &c. (*x*).

8.—(1.) Upon any offer of shares to the public for subscription, it shall be lawful for a company to pay a commission to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any shares in the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, if the payment of the commission and the amount or rate per cent. of the commission paid or agreed to be paid are respectively authorised by the articles of association and disclosed in the prospectus (*y*), and the commission paid or agreed to be paid does not exceed the amount or rate so authorised.

(2.) Save as aforesaid no company shall apply any of its shares or capital money either directly or indirectly in payment of any commission, discount, or allowance, to any person in consideration of his subscribing or agreeing to subscribe, whether absolutely or conditionally, for any

(*q*) As to recovery of penalties, see Comp. Act, 1862, § 65.

(*r*) 1st January, 1901, see § 35.

(*s*) See Form No. 45 to order of Board of Trade, 28th December, 1900, and § 28.

(*t*) Compare the provisions of the repealed § 25 of the Comp. Act, 1867. See, too, §§ 10 (1) (e), 12 (2) (a), and 19 (1) (c) of the Act of 1900.

(*u*) See the definition in § 30, and as to the recovery of penalties, Comp. Act, 1862, § 65.

(*x*) See *ante*, pp. 43, 44. This section does not authorise the issue of shares at a discount under colour of a commission, see *Keatinge* v. *Paringa Consolidated Mines*, W. N. 1902, p. 15.

(*y*) See the definition in § 30.

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shares of the company, or procuring or agreeing to procure subscriptions, whether absolute or conditional, for any shares in the company, whether the shares or money be so applied by being added to the purchase money of any property acquired by the company or to the contract price of any work to be executed for the company, or the money be paid out of the nominal purchase money or contract price, or otherwise.

(3.) But nothing in this section shall affect the power of any company to pay such brokerage as it has heretofore been lawful for a company to pay.

Prospectus (*z*).

Filing of prospectus.

9.—(1.) Every prospectus (*a*) issued by or on behalf of a company or in relation to any intended company shall be dated, and that date shall, unless the contrary be proved, be taken as the date of publication of the prospectus.

(2.) A copy of every such prospectus shall be signed by every person who is named therein as a director (*b*) or proposed director of the company, or by his agent authorised in writing, and shall be filed with the registrar on or before the date of its publication.

(3.) The registrar shall not register any prospectus unless it is so dated and signed. No prospectus shall be issued until so filed for registration, and every prospectus shall state on the face of it that it has been so filed.

Specific requirements as to particulars of prospectus.

10.—(1.) Every prospectus (*c*) issued by or on behalf of a company, or by or on behalf of any person who is or has been engaged or interested in the formation of the company, must state—

(a.) the contents of the memorandum of association, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively; and the number of founders or management shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company; and

(b.) the number of shares, if any, fixed by the articles of association as the qualification of a director, and any provision in the articles of association as to the remuneration of the directors; and

(c.) the names, descriptions, and addresses of the directors (*d*) or proposed directors; and

(d.) the minimum subscription (*e*) on which the directors may proceed to allotment, and the amount payable on application and allotment on each share; and in the case of a second or subsequent offer of shares, the amount offered for subscription on each previous allotment, and the amount actually allotted; and the amount, if any, paid on such shares; and

(e.) the number and amount of shares and debentures (*d*) issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which such shares or debentures have been issued or are proposed or intended to be issued; and

(*z*) As to prospectuses and the provisions of this Act relating thereto, see *ante*, pp. 44 *et seq.*, and 124 *et seq.*

(*a*) See the definition in § 30.

(*b*) See the definition in § 30. See also § 2.

(*c*) See the definition in § 30. See, too, *ante*, pp. 46 *et seq.*

(*d*) See the definition in § 30.

(*e*) See § 4 (2).

(f.) the names and addresses of the vendors (*f*) of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of publication of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor; and

(g.) the amount (if any) paid or payable as purchase money in cash, shares, or debentures (*g*) of any such property as aforesaid, specifying the amount payable for good-will; and

(h.) the amount (if any) paid or payable as commission for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in the company, or the rate of any such commission (*h*); and

(i.) the amount or estimated amount of preliminary expenses; and

(j.) the amount paid or intended to be paid to any promoter (*i*) and the consideration for any such payment; and

(k.) the dates of and parties to every material contract, and a reasonable time and place at which any material contract or a copy thereof may be inspected: Provided that this requirement shall not apply to a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company, or to any contract entered into more than three years before the date of publication of the prospectus (*j*); and

(l.) the names and addresses of the auditors (if any) (*k*) of the company; and

(m.) full particulars of the nature and extent of the interest (if any) of every director (*f*) in the promotion of or in the property proposed to be acquired by the company, with a statement of all sums paid or agreed to be paid to him in cash or shares by any person either to qualify him as a director or otherwise for services rendered by him in connection with the formation of the company (*l*).

(2.) For the purposes of this section every person shall be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(a.) the purchase money is not fully paid at the date of publication of the prospectus; or

(b.) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus; or

(*f*) See sub-sects. (2) and (3).

(*g*) See the definition in § 30.

(*h*) See § 8.

(*i*) As to promoters, see *ante*, p. 481.

(*j*) Compare § 38 of the Comp. Act, 1867, now repealed, and see as to that section, *ante*, pp. 128–130. As to varying contracts referred to, see Comp. Act, 1900, § 11. As to the date of publication, see ib. § 9 (1).

(*k*) See § 21.

(*l*) See as to directors' liability for secret profits, *ante*, pp. 509 *et seq.*

(c.) the contract depends for its validity or fulfilment on the result of such issue (*m*).

(3.) Where any of the property to be acquired by the company is to be taken on lease, this section shall apply as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

(4.) This section shall not apply to a circular or notice inviting existing members or debenture holders (*n*) of a company to subscribe for further shares or debentures, but, subject as aforesaid, this section shall apply to any prospectus (*n*) whether issued on or with reference to the formation of a company or subsequently: Provided that—

(a.) the requirements as to the memorandum of association, and the qualification, remuneration, and interest of directors, the names, descriptions, and addresses of directors or proposed directors, and the amount or estimated amount of preliminary expenses, shall not apply in the case of a prospectus published more than one year after the date at which the company is entitled to commence business (*o*); and

(b.) in the case of a prospectus published more than one year after the date at which the company is entitled to commence business (*o*), the obligation to disclose all material contracts shall be limited to a period of two years immediately preceding the publication of the prospectus (*p*).

(5.) Any condition requiring or binding any applicant for shares or debentures to waive compliance with any requirement of this section, or purporting to affect him with notice of any contract, document, or matter not specifically referred to in the prospectus, shall be void (*q*).

(6.) Where any such prospectus as is mentioned in this section is published as a newspaper advertisement, it shall not be necessary to specify the contents of the memorandum of association or the signatories thereto, and the number of shares subscribed for by them.

(7.) In the event of non-compliance with any of the requirements of this section, a director (*n*) or other person responsible for the prospectus shall not incur any liability (*r*) by reason of the non-compliance, if he proves that—

(a.) as regards any matter not disclosed, he was not cognisant thereof; or

(b.) the non-compliance arose from an honest mistake of fact on his part.

Provided that in the event of non-compliance with the requirements contained in paragraph (m) of sub-section (1) of this section no director or other person shall incur any liability in respect of such non-compliance unless it is proved that he had knowledge of the matters not disclosed.

(8.) Nothing in this section shall limit or diminish any liability

(*m*) See § 6 (3).

(*n*) See the definition in § 30.

(*o*) See § 6.

(*p*) As to this date, see § 9 (1).

(*q*) As to such clauses, see *ante*, p. 124. Compare § 4 (5).

(*r*) As to liability for non-compliance with the requirements of the section, see *ante*, pp. 124 *et seq.* Compare Directors Liability Act, 1890, § 3 (1).

which any person may incur under the general law apart from this section (s).

Restriction on alteration of terms mentioned in prospectus.

11. A company shall not prior to the statutory meeting (t) vary the terms of a contract referred to in the prospectus, except subject to the approval of the statutory meeting.

Statutory Meeting.

First statutory meeting of company.

12.—(1.) Every company limited by shares (u) and registered after the commencement of this Act (x) shall, within a period of not less than one month nor more than three months from the date at which the company is entitled to commence business (y), hold a general meeting of the members of the company, which shall be called the statutory meeting.

(2.) The directors (z) shall, at least seven days before the day on which the meeting is held, forward to every member of the company a report (a) certified by not less than two directors of the company, or, where there are less than two directors, by the sole director and manager, stating—

(a.) the total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash, and stating in the case of shares partly paid up the extent to which they are so paid up, and in either case the consideration for which they have been allotted;

(b.) the total amount of cash received by the company in respect of such shares, distinguished as aforesaid;

(c.) an abstract of the receipts and payments of the company on capital account to the date of the report, and an account or estimate of the preliminary expenses of the company;

(d.) the names, addresses, and descriptions of the directors (z), auditors (if any), manager (if any), and secretary of the company; and

(e.) the particulars of any contract, the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

(3.) The report shall, so far as it relates to the shares allotted by the company, and to the cash received in respect of such shares, and to the receipts and payments of the company on capital account, be certified as correct by the auditors, if any, of the company (b).

(4.) The directors shall cause a copy of the report, certified as by this section required, to be filed with the registrar forthwith after the sending thereof to the members of the company.

(5.) The directors shall cause a list showing the names, descriptions, and addresses of the members of the company, and the number of shares held by them respectively, to be produced at the commencement of the meeting, and to remain open and accessible to any member of the company during the continuance of the meeting.

(s) See generally as to this, *ante*, pp. 126 *et seq.*

(t) See § 12 and sub-sect. 2 (e) of that section.

(u) This section only applies to companies limited by shares. The repealed § 39 of the Companies Act, 1867, was not limited to these companies.

(x) 1st January, 1891. See § 35.

(y) See § 6.

(z) See the definition in § 30.

(a) See Form No. 46 to order of Board of Trade, dated 28th December, 1900. See, too, § 28.

(b) See § 28.

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(6.) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles of association may be passed.

(7.) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been given in accordance with the articles of association, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(8.) If default is made in filing such report as aforesaid or in holding the statutory meeting, then, at the expiration of fourteen days after the last day on which the meeting ought to have been held, any shareholder may petition the Court for the winding up of the company, and upon the hearing of the petition the Court may either direct that the company be wound up (*c*), or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by any persons who in the opinion of the Court are responsible for the default.

Extraordinary general meeting.

13.—(1.) Notwithstanding anything in any regulations of a company, the directors (*d*) of a company shall, on the requisition of the holders of not less than one-tenth of the issued capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2.) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the office (*e*) of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3.) If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit.

(4.) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution (*f*); and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5.) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors (*g*).

Mortgages and Charges (*h*).

Registration of mortgages and charges.

14.—(1.) Every mortgage or charge created by a company after the commencement of this Act (*i*) and being either—

(*c*) This is an extension of Comp. Act, 1862, § 79.

(*d*) See the definition in § 30.

(*e*) Presumably the registered office.

(*f*) See Comp. Act, 1862, § 51.

(*g*) See as to this section, *ante*, pp. 468 and 474.

(*h*) See, too, Comp. Act, 1862, § 43, and *ante*, pp. 311 *et seq.*, 1011, and 1012.

(*i*) 1st January, 1901. See § 35.

(a.) a mortgage or charge for the purpose of securing any issue of debentures (*j*); or

(b.) a mortgage or charge on uncalled capital of the company; or

(c.) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or

(d.) a floating charge on the undertaking or property of the company (*k*),

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless filed with the registrar for registration in manner required by this Act, within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(2.) Where the mortgage or charge comprises property outside the United Kingdom, it shall, so far as that property is concerned, be sufficient compliance with the requirements of this section, if a deed purporting to specifically charge such property be registered notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate.

(3.) The registrar shall keep, with respect to each company, a register in the prescribed form of all such mortgages and charges created by the company after the commencement of this Act, and requiring registration under this section, and shall, on payment of the prescribed fee (*l*) enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(4.) Provided that where a series of debentures (*m*) containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu* (*n*) is created by a company, it shall be sufficient to enter on the register—

(a.) the total amount secured by the whole series; and

(b.) the dates of the resolutions creating the series and of the covering deed, if any, by which the security is created or defined; and

(c.) a general description of the property charged; and

(d.) the names of the trustees, if any, for the debenture holders.

(5.) Where more than one issue is made of debentures (*m*) in the same series, the company may require the registrar to enter on the register the date and amount of any particular issue, but an omission to do this shall not affect the validity of the debentures (*m*) issued.

(6.) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured (which certificate shall be conclusive evidence that the requirements of this section as to registration have been

(*j*) See the definition in § 30.

(*k*) As to such charges, see *ante*, pp. 317 *et seq.*, and Pref. Payments, &c., Amend. Act, 1897, §§ 2 and 3.

(*l*) See order of Board of Trade as to fees, dated 28th December, 1900.

(*m*) See the definition in § 30.

(*n*) As to the effect of debenture-holders being entitled *pari passu*, see *ante*, pp. 326 *et seq.*

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(6.) The members of the company present at the meeting shall be at liberty to discuss any matter relating to the formation of the company, or arising out of the report, whether previous notice has been given or not, but no resolution of which notice has not been given in accordance with the articles of association may be passed.

(7.) The meeting may adjourn from time to time, and at any such adjourned meeting any resolution of which notice has been given in accordance with the articles of association, either before or subsequently to the former meeting, may be passed, and the adjourned meeting shall have the same powers as an original meeting.

(8.) If default is made in filing such report as aforesaid or in holding the statutory meeting, then, at the expiration of fourteen days after the last day on which the meeting ought to have been held, any shareholder may petition the Court for the winding up of the company, and upon the hearing of the petition the Court may either direct that the company be wound up (*c*), or give directions for the report being filed or a meeting being held, or make such other order as may be just, and may order that the costs of the petition be paid by any persons who in the opinion of the Court are responsible for the default.

Extraordinary general meeting.

13.—(1.) Notwithstanding anything in any regulations of a company, the directors (*d*) of a company shall, on the requisition of the holders of not less than one-tenth of the issued capital of the company upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

(2.) The requisition must state the objects of the meeting, and must be signed by the requisitionists and deposited at the office (*e*) of the company, and may consist of several documents in like form each signed by one or more requisitionists.

(3.) If the directors of the company do not proceed to cause a meeting to be held within twenty-one days from the date of the requisition being so deposited, the requisitionists, or a majority of them in value, may themselves convene the meeting, but any meeting so convened shall not be held after three months from the date of such deposit.

(4.) If at any such meeting a resolution requiring confirmation at another meeting is passed, the directors shall forthwith convene a further extraordinary general meeting for the purpose of considering the resolution (*f*); and, if the directors do not convene the meeting within seven days from the date of the passing of the first resolution, the requisitionists, or a majority of them in value, may themselves convene the meeting.

(5.) Any meeting convened under this section by the requisitionists shall be convened in the same manner, as nearly as possible, as that in which meetings are to be convened by directors (*g*).

Mortgages and Charges (*h*).

Registration of mortgages and charges.

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(*c*) This is an extension of Comp. Act, 1862, § 79.

(*d*) See the definition in § 30.

(*e*) Presumably the registered office.

(*f*) See Comp. Act, 1862, § 51.

(*g*) See as to this section, *ante*, pp. 468 and 474.

(*h*) See, too, Comp. Act, 1862, § 43, and *ante*, pp. 311 *et seq.*, 1011, and 1012.

(*i*) 1st January, 1901. See § 35.

(a.) a mortgage or charge for the purpose of securing any issue of debentures (*j*); or

(b.) a mortgage or charge on uncalled capital of the company; or

(c.) a mortgage or charge created or evidenced by an instrument which, if executed by an individual, would reqnire registration as a bill of sale; or

(d.) a floating charge on the undertaking or property of the company (*k*),

shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless filed with the registrar for registration in manner required by this Act, within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(2.) Where the mortgage or charge comprises property outside the United Kingdom, it shall, so far as that property is concerned, be sufficient compliance with the requirements of this section, if a deed purporting to specifically charge such property be registered notwithstanding that further proceedings may be necessary to make such mortgage or charge valid or effectual according to the law of the country in which such property is situate.

(3.) The registrar shall keep, with respect to each company, a register in the prescribed form of all such mortgages and charges created by the company after the commencement of this Act, and requiring registration under this section, and shall, on payment of the prescribed fee (*l*) enter in the register, with respect to every such mortgage or charge, the date of creation, the amount secured by it, short particulars of the property mortgaged or charged, and the names of the mortgagees or persons entitled to the charge.

(4.) Provided that where a series of debentures (*m*) containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu* (*n*) is created by a company, it shall be sufficient to enter on the register—

(a.) the total amount secured by the whole series; and

(b.) the dates of the resolutions creating the series and of the covering deed, if any, by which the security is created or defined; and

(c.) a general description of the property charged; and

(d.) the names of the trustees, if any, for the debenture holders.

(5.) Where more than one issue is made of debentures (*m*) in the same series, the company may require the registrar to enter on the register the date and amount of any particular issue, but an omission to do this shall not affect the validity of the debentures (*m*) issued.

(6.) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured (which certificate shall be conclusive evidence that the requirements of this section as to registration have been

(*j*) See the definition in § 30.

(*k*) As to such charges, see *ante*, pp. 317 *et seq.*, and Pref. Payments, &c., Amend. Act, 1897, §§ 2 and 3.

(*l*) See order of Board of Trade as to fees, dated 28th December, 1900.

(*m*) See the definition in § 30.

(*n*) As to the effect of debenture-holders being entitled *pari passu*, see *ante*, pp. 326 *et seq.*

complied with), and the company shall cause a copy of the certificate so given to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered.

(7.) It shall be the duty of the company to register every mortgage or charge created by the company and requiring registration under this section, and for that purpose to supply the registrar with the particulars required for registration (*o*); but any such mortgage or charge may be registered on the application of any person interested therein.

(8.) The register kept, in pursuance of this section, of the mortgages and charges of each company shall be open to inspection by any person on payment of the prescribed fee (*p*) not exceeding one shilling for each inspection.

(9.) Every company shall cause a copy of every instrument creating any mortgage or charge requiring registration under this section, to be kept at the registered office of the company, and to be open to inspection by the members and creditors of the company on payment of such fee, not exceeding one shilling for each inspection, as may be fixed by the regulations of the company. Provided that in the case of a series of uniform debentures a copy of one such debenture shall be sufficient.

Rectification of register.

15. A judge of the High Court, on being satisfied that the omission to register a mortgage or charge within the time required by this Act, or the omission or misstatement of any particular with respect to any such mortgage or charge, was accidental, or due to inadvertence or to some other sufficient cause, or is not of a nature to prejudice the position of creditors or shareholders of the company, or that on other grounds it is just and equitable to grant relief may, on the application of the company or any person interested, and on such terms and conditions as seem to the judge just and expedient, order that the time for registration be extended, or, as the case may be, that the omission or misstatement be rectified (*q*).

Entry of satisfaction.

16. The registrar may, on evidence being given to his satisfaction that the debt for which any registered mortgage or charge was given has been paid or satisfied, order that a memorandum of satisfaction be entered on the register, and shall if required furnish the company with a copy thereof (*r*).

Index of registers of mortgages and charges.

17. The registrar shall keep a chronological index, in the prescribed form and with the prescribed particulars, to the mortgages or charges registered under this Act.

Penalties.

18. If any company makes default in complying with the requirements of this Act as to the registration of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorised or permitted such default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds; and if any person knowingly and wilfully authorises or permits the delivery of any

(*o*) See Form No. 47 to order of Board of Trade, dated 28th December, 1900.

(*p*) See order of Board of Trade as to fees, dated 28th December, 1900.

(*q*) See *ante*, p. 313. And as to the terms usually imposed, *Joplin Brewery Co.* [1902], 1 Ch. 79. If the company is being wound up, relief on these terms is usually valueless, and consequently will be refused, see *Abrahams & Sons, Ld.*, W. N. 1902, p. 37; but see *Spiral Globe, Ld.*, [1902] 1 Ch. 396. As to costs, see Judicature Act, 1890 (§ 5).

(*r*) See Form No. 49 to order of Board of Trade, 28th December 1900.

debenture or certificate of debenture stock required by this Act to be registered, without a copy of the certificate of the registrar being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds (*rr*).

Annual Summary.

Annual summary. 25 & 26 Vict. c. 89.

19.—(1.) The summary mentioned in section twenty-six of the Companies Act, 1862, shall be so framed (*s*) as to distinguish between the shares issued for cash and the shares issued otherwise than for cash or only partly for cash, and shall, in addition to the particulars required by that section to be specified, also specify—

(a.) the total amount of debt due from the company in respect of all mortgages and charges which require registration under this Act (*t*), or which would require such registration if created after the commencement of this Act (*u*); and

(b.) the names and addresses of the persons who are the directors (*y*) of the company at the date of the summary.

(2.) The list and summary mentioned in the said section twenty-six must be signed by the manager or by the secretary of the company.

Amendment of 25 & 26 Vict. c. 89, §§ 45, 46.

20. Sections forty-five and forty-six of the Companies Act, 1862, shall apply to companies having a capital divided into shares, and the words "and not having a capital divided into shares" in those sections shall be repealed.

Audit (*x*).

Appointment of auditors.

21.—(1.) Every company shall at each annual general meeting appoint an auditor or auditors to hold office until the next annual general meeting.

(2.) If an appointment of auditors is not made at an annual general meeting, the Board of Trade may, on the application of any member of the company, appoint an auditor of the company for the current year, and fix the remuneration to be paid to him by the company for his services.

(3.) A director (*y*) or officer of the company shall not be capable of being appointed auditor of the company.

(4.) The first auditors of the company may be appointed by the directors before the statutory meeting (*z*), and if so appointed shall hold office until the first annual general meeting, unless previously removed by a resolution of the shareholders in general meeting, in which case the shareholders at such meeting may appoint auditors.

(5.) The directors of a company may fill any casual vacancy in the office of auditor, but while any such vacancy continues the surviving or continuing auditor or auditors, if any, may act.

Remuneration of auditors.

22. The remuneration of the auditors of a company shall be fixed by the company in general meeting, except that the remuneration of any auditors

(*rr*) See *ante*, p. 314, and as to the recovery of penalties, see Comp. Act, 1862, § 65.

(*s*) See Form E. in Schedule II. to the Comp. Act, 1862, *ante*, pp. 1339, 1340, and Forms 6B and No. 9 to the order of Board of Trade, 28th December, 1900.

(*t*) See *ante*, § 14 (1).

(*u*) 1st January, 1901. See § 35.

(*x*) See *ante*, pp. 621, 622. And as to the liability of auditors, *ante*, pp. 617, 618. Compare the provisions of the Comp. Act, 1879, § 7.

(*y*) See the definition in § 30.

(*z*) See § 12 and note thereto.

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appointed before the statutory meeting, or to fill any casual vacancy, may be fixed by the directors (*a*).

Rights and duties of auditors.

23. Every auditor of a company shall have a right of access at all times to the books and accounts and vouchers of the company, and shall be entitled to require from the directors and officers of the company such information and explanation as may be necessary for the performance of the duties of the auditors, and the auditors shall sign a certificate at the foot of the balance sheet stating whether or not all their requirements as auditors have been complied with, and shall make a report to the shareholders on the accounts examined by them, and on every balance sheet laid before the company in general meeting during their tenure of office; and in every such report shall state whether, in their opinion, the balance sheet referred to in the report is properly drawn up so as to exhibit a true and correct view of the state of the company's affairs as shown by the books of the company; and such report shall be read before the company in general meeting (*b*).

Winding up.

Application of 33 & 34 Vict. c. 104, § 2.

24. The provisions of section two of the Joint Stock Companies Arrangement Act, 1870, shall apply not only as between the company and the creditors, or any class thereof, but as between the company and the members, or any class thereof (*c*).

Amendment of 25 & 26 Vict. c. 89, § 138, as to applications.

25. In a voluntary winding up an application under section one hundred and thirty-eight of the Companies Act, 1862, may be made by any creditor of the company (*d*).

Defunct Companies.

Amendment of law as to striking names of defunct companies off register.

26.—(1.) Where a company is being wound up and the registrar has reasonable cause to believe that no liquidator is acting, or that the affairs of the company are fully wound up, and the returns required to be made by the liquidator have not been made for a period of six consecutive months after notice by the registrar demanding the returns has been sent by post to the registered address of the company, or to the liquidator at his last known place of business, the provisions of section seven of the Companies Act, 1880 (*e*), shall apply in like manner as if the registrar had not within one month after sending the second letter therein mentioned received any answer thereto.

43 Vict. c. 19.

(2.) In sub-section five of the said section seven, after the words "or member," in each place where they occur, shall be inserted the words "or creditor," and in the same sub-section, after the word "operation," the words "or otherwise" shall be substituted for the word "and."

Companies Limited by Guarantee.

Provisions as to companies limited by guarantee.

27.—(1.) A company limited by guarantee (*f*) shall not be capable of having a capital divided into shares, unless the memorandum of association so provides (*g*), and specifies the amount of its capital (subject to increase

(*a*) See the definition in § 30.

(*b*) See § 28.

(*c*) *Ante*, pp. 986 *et seq.*

(*d*) *Ante*, p. 1194.

(*e*) *Ante*, pp. 1361, 1362. See, too, as to jurisdiction over companies which have been struck off as defunct, *ante*, p. 1177.

(*f*) See Comp. Act, 1862, § 9. See before this Act, *Malleson* v. *General Mineral Syndicate* [1894], 3 Ch. 538.

(*g*) The Comp. Act, 1862, did not require the share capital to be stated in the memorandum, see §§ 9 and 14 and Form C. in the 2nd Schedule.

or reduction in accordance with the Companies Acts) (*h*) and the number of shares into which the capital is divided.

(2.) Every provision in any memorandum or articles of association or resolution of a company (whether limited by guarantee or otherwise) purporting to divide the undertaking of the company into shares or interests shall for the purposes of this section be treated as a provision for a capital divided into shares, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

(3.) In the case of a company limited by guarantee and not having a capital divided into shares, every provision in the memorandum or articles of association or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(4.) This section shall apply only to companies registered after the commencement of this Act (*i*).

False Statements.

Penalty for false statement.

28. If any person in any return, report, certificate, balance sheet, or other document, required by or for the purposes of this Act, wilfully makes a statement false in any material particular, knowing it to be false, he shall be guilty of a misdemeanor, and shall be liable on conviction on indictment to imprisonment for a term not exceeding two years, with or without hard labour, and on summary conviction to imprisonment for a term not exceeding four months, with or without hard labour, and in either case to a fine in lieu of or in addition to such imprisonment as aforesaid: Provided that the fine imposed on summary conviction shall not exceed one hundred pounds.

Conversion of Stock into Shares.

Conversion of stock into shares. 25 & 26 Vict. c. 89.

29. Every company limited by shares, and which has in pursuance of the Companies Act, 1862, converted any portion of its shares into stock, may so far modify the conditions in its memorandum of association, if authorised to do so by its articles as originally framed or as altered by special resolution in manner provided in the Companies Act, 1862, as to reconvert such stock into paid-up shares of any denomination (*j*).

Supplemental.

Definitions.

30. In this Act, unless the context otherwise requires—

The expression "Companies Acts" means the Companies Act, 1862, and the Acts amending the same;

The expression "company" means a company registered under the Companies Acts;

The expression "director" includes any person occupying the position of director, by whatever name called;

The expression "registered" means registered under the Companies Acts;

(*h*) *Qu.* as to these words. The Comp. Act, 1862, § 12, as to increase, and Comp. Act, 1867, § 9, as to reduction only apply to companies limited by shares.

(*i*) 1st January, 1901, § 35.

(*j*) See Comp. Act, 1862, §§ 12, 50, and 51.

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The expression "prescribed" means prescribed by the Board of Trade;

The expression "prospectus" means any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company;

The expression "debenture" includes debenture stock;

Other expressions have the same meanings as in the Companies Act, 1862.

Application of Act.

31. This Act shall, except as otherwise expressed, apply to every company, whether formed before or after the commencement of this Act (*k*).

Construction of 53 & 54 Vict. c. 63 and of Act.

32. The Companies (Winding-up) Act, 1890, and this Act, shall have effect as part of the Companies Act, 1862; but nothing in this section shall be construed as extending the Companies (Winding-up) Act, 1890, to Scotland or Ireland.

Repeal.

33.—(1.) Section twenty-five of the Companies Act, 1867, and the other enactments mentioned in the schedule to this Act, to the extent specified in the third column of that schedule, are hereby repealed.

(2.) No proceedings under section twenty-five of the Companies Act, 1867, shall be commenced after the commencement of this Act (*l*).

Application to Scotland.

34. This Act shall apply to Scotland, subject to the following provisions and modifications:—

(1.) "Solicitor of the High Court" shall mean enrolled law agent;

(2.) The provisions of this Act with respect to the registration of mortgages and charges shall not apply to companies registered in Scotland;

(3.) All prosecutions for offences or fines shall be at the instance of the Lord Advocate or a procurator fiscal as the Lord Advocate may direct.

Commencement.

35. This Act shall, except as otherwise expressed, come into operation on the first day of January one thousand nine hundred and one.

Short title.

36. This Act may be cited as the Companies Act, 1900, and may be cited with the Companies Acts, 1862 to 1898.

Section 33.

SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Short Title.	Extent of Repeal.
25 & 26 Vict. c. 89	The Companies Act, 1862.	Section eighteen, from "A certificate" to the end of the section (*m*). In sections forty-five and forty-six, the words "and not having a capital divided into shares" (*n*). Section one hundred and ninety-two (*m*).
30 & 31 Vict. c. 131	The Companies Act, 1867.	Sections twenty-five (*o*), thirty-eight (*p*), and thirty-nine (*q*).

(*k*) See § 35.

(*l*) See as to this, *ante*, pp. 565—567.

(*m*) See now § 1 of this Act.

(*n*) See ib. § 20.

(*o*) See ib. § 33. As to the information to be given with respect to the consideration for which shares are issued, see now §§ 7 (1), 10 (1) (*e*), 12 (2) (*a*), and § 19 (1).

(*p*) See now ib. § 10 (1) (*k*).

(*q*) See now ib. § 12.

No. VII.

ORDERS AND RULES (a).

GENERAL ORDER AND RULES OF THE HIGH COURT OF CHANCERY TO REGULATE THE MODE OF PROCEEDING UNDER THE COMPANIES ACT, 1862, ISSUED BY THE LORD HIGH CHANCELLOR, TUESDAY, 11TH DAY OF NOVEMBER, 1862.

The right honourable Richard, Baron Westbury, Lord High Chancellor of Great Britain, with the advice and consent of the right honourable Sir John Romilly, Master of the Rolls, the honourable the Vice-Chancellor, Sir Richard Torin Kindersley, the honourable the Vice-Chancellor, Sir John Stuart, and the honourable the Vice-Chancellor, Sir William Page Wood, doth hereby, in pursuance and execution of the powers given by the statute 25th and 26th Victoria, chapter 89 (b), and of all other powers and authorities enabling him in that behalf, order and direct in manner following:—

Petition to wind up company (c).

1. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be intituled in the matter of "The Companies Act, 1862," and of the company to which such petition shall relate, describing the company by its most usual style or firm.

2. Every such petition shall be advertised seven clear days before the hearing as follows:—

(1.) In the case of a company whose registered office, or if there shall be no such office, then whose principal, or last known principal place of business is or was situate within ten miles from Lincoln's Inn Hall, once in the "London Gazette," and once at least in two London daily morning newspapers.

(a) These rules have been repealed by the Companies (Winding-up) Rules, 1890, r. 180, so far as they relate to the winding up of companies under an Order of the Court made after the 31st December, 1890. They still apply, with certain modifications, to proceedings in the winding up of companies either voluntarily or under the supervision of the Court, see Rules, 1892, r. 17. The Rules themselves have, however, been printed in full for purposes of reference; but, with the exception of form No. 56, only such of the forms in the schedule have been reprinted as are referred to in the Rules which appear to be applicable to proceedings in a voluntary winding up or a winding up under the supervision of the Court. See, also, the Comparative Table, *ante*, pp. 1255–1258.

(b) See § 170, now repealed.

(c) These Rules have been superseded by Rules, 1890, rr. 33 *et seq.*, and Rules, 1892, rr. 15 and 18 *et seq.*, which also apply to petitions for a winding up under supervision. See *ante*, pp. 882 *et seq.*

(2.) In the case of any other company, once in the "London Gazette," and once at least in two local newspapers circulating in the district where such registered office or principal or last-known principal place of business, as the case may be, of such company is or was situate.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any).

3. Every such petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if no registered office, then at the principal or last-known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Court may direct; and every petition for the winding up of a company subject to the supervision of the Court, shall also be served upon the liquidator (if any) appointed for the purpose of winding up the affairs of the company.

4. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto, in the form or to the effect set forth in Form No. 2, in the third Schedule hereto; such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or in case the petition is presented by the company, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *primâ facie* evidence of the statements in the petition.

5. Every contributory or creditor of the company shall be entitled to be furnished by the solicitor to the petitioner with a copy of the petition, within twenty-four hours after requiring the same, on paying at the rate of fourpence per folio of seventy-two words for such copy.

Order to wind up company (*d*).

6. Every order for the winding up of a company by the Court (*e*), or subject to its supervision (*f*), shall, within twelve days after the date thereof, be advertised by the petitioner once in the "London Gazette," and shall be served upon such persons (if any) and in such manner as the Court may direct.

7. A copy of every order for winding up a company, certified to be a true copy thereof as passed and entered, shall be left by the petitioner at the chambers of the judge (*g*) within ten days after the same shall have been passed and entered, and in default thereof any other person interested in the winding up may leave the same, and the judge may, if he thinks

(*d*) See the Act, §§ 82, 85, 86, 147, and *ante*, pp. 922 *et seq.*

(*e*) As to an order for the winding up by the Court, see Rules, 1890, rr. 38 *et seq.*, and Rules, 1892, rr. 22 *et seq.*

(*f*) See Rules 1890 Form 19.

(*g*) The rule only applies to a winding up under supervision so far as applicable to such winding up. For chambers of the judge read now "office of registrar," see Rules, 1892, r. 17. As to the drawing up of the order, see Rules, 1892, r. 17.

fit, give the carriage and prosecution of the order to such person. Upon such copy being left, a summons shall be taken out to proceed with the winding up of the company, and be served upon all parties who may have appeared upon the hearing of the petition. Upon the return of such summons, a time shall, if the judge thinks fit, be fixed for the appointment of an official liquidator (*h*), and for the proof of debts, and for the list of contributories to be brought in, and directions may be given as to the advertisements to be issued for all or any of such purposes, and generally as to the proceedings and the parties to attend thereon. The proceedings under the order shall be continued by adjournment, and, when necessary, by further summons, and any such direction as aforesaid may be given, added to, or varied, at any subsequent time, as may be found necessary.

Official liquidator (*h*).

8. The judge may appoint a person to the office of official liquidator without previous advertisement, or notice to any party, or fix a time and place for the appointment of an official liquidator, and may appoint or reject any person nominated at such time and place, and appoint any person not so nominated.

9. When a time and place are fixed for the appointment of an official liquidator, such time and place shall be advertised in such manner as the judge shall direct, so that the first or only advertisement shall be published within fourteen days and not less than seven days before the day so fixed.

10. Every official liquidator shall give security by entering into a recognisance with two or more sufficient sureties in such sum as the judge may approve; and the judge may, if he shall think fit, accept the security of any guarantee society established by charter or Act of Parliament in England, in lieu of the security of such sureties as aforesaid, or of any of them.

11. The official liquidator shall be appointed by order, and unless he shall have given security, a time shall be fixed by such order within which he is to do so; and the order shall fix the times or periods at which the official liquidator is to leave his accounts of his receipts and payments at the judge's chambers (*i*), and shall direct that all moneys to be received shall be paid into the Bank of England, immediately after the receipt thereof, to the account of the official liquidator of the company, and an account shall be opened there accordingly; and an office copy of the order shall be lodged at the Bank of England (*k*).

12. When an official liquidator has given security pursuant to the directions in the order appointing him, the same shall be certified by the chief clerk, as in the case of a receiver appointed in a cause subject to giving security.

13. The official liquidator shall, on each occasion of passing his account (*l*), and also whensoever the judge may so require, satisfy the judge that his sureties are living, and resident in Great Britain, and have

(*h*) See the Act, §§ 85, 92, 93, 103, 104. As to the title official liquidator, see *ante*, p. 1283, note (*n*). Rules 8–19 appear to deal only with a winding up by the Court, and are now superseded. They are retained for purposes of reference. For the present practice, see *ante*, p. 968.

(*i*) See rule 19.

(*k*) See, further, as to accounts in the Bank of England, rules 36–44.

(*l*) See rule 19.

not been adjudged bankrupt or become insolvent, and in default thereof he may be required to enter into fresh security within such time as shall be directed.

14. Every appointment of an official liquidator shall be advertised in such manner as the judge shall direct, immediately after he has been appointed, and has given security.

15. Where it is desired to appoint provisionally an official liquidator (*m*) an application for that purpose may, at any time after the presentation of the petition for winding up the company, be made by summons, without advertisement or notice to any person, unless the judge shall otherwise direct; and such provisional official liquidator may, if the judge shall think fit, be appointed without security.

16. In case of the death, removal or resignation of an official liquidator, another shall be appointed in his room, in the same manner as directed in the case of a first appointment, and the proceedings for that purpose may be taken by such party interested as may be authorised by the judge to take the same.

17. The official liquidator shall, with all convenient speed after he is appointed, proceed to make up, continue, complete, and rectify the books of account of the company; and shall provide and keep such books of account as shall be necessary, or as the judge may direct, for the purposes aforesaid, and for showing the debts and credits of the company, including a ledger, which shall contain the separate accounts of the contributories, and in which every contributory shall be debited from time to time with the amount payable by him in respect of any call to be made as provided by the said Act and these rules.

18. The official liquidator shall be allowed in his accounts, or otherwise paid, such salary or remuneration as the judge may from time to time direct, including any necessary employment of assistants or clerks by the official liquidator, to which regard shall be had; and such salary or remuneration may either be fixed at the time of his appointment, or at any time thereafter, as the judge may think fit. Every allowance of such salary or remuneration, unless made at the time of his appointment, or upon passing an account, shall be made upon application for that purpose by the official liquidator, on notice to such persons (if any), and supported by such evidence as the judge shall require; nevertheless the judge may from time to time allow any sum he may think fit to the official liquidator, on account of the salary or remuneration to be thereafter allowed.

19. The accounts of the official liquidator shall be left at the judge's chambers at the times directed by the order appointing him, and at such other times as may from time to time be required by the judge, and such accounts shall, upon notice to such parties (if any), as the judge shall direct, be passed and verified in the same manner as receiver's accounts.

Proof of debts (*n*).

20. For the purpose of ascertaining the debts and claims due from the

(*m*) See further, §§ 85 and 92 of the Act, *infra*, rule 59, and *ante*, pp. 965–967.

(*n*) See the Act, §§ 107, 158. These rr. 20–28 appear to deal only with the proof of debts in a winding up by the Court. They are now superseded, and are retained for purpose of reference only. For the present practice, see *ante*, pp. 991 *et seq.*

company, and of requiring the creditors to come in and prove their debts or claims, an advertisement shall be issued at such time as the judge shall direct: and such advertisement shall fix a time for the creditors to send their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any), to the official liquidator, and appoint a day for adjudicating thereon.

21. The creditors need not attend upon the adjudication, nor prove their debts or claims, unless they are required to do so by notice from the official liquidator; but upon such notice being given, they are to come in and prove their debts or claims within a time to be therein specified.

22. The official liquidator shall investigate the debts and claims sent in to him, and ascertain, as far as he is able, which of such debts and claims are justly due from the company; and he shall make out and leave at the chambers of the judge, a list of all the debts and claims sent in to him, distinguishing which of the debts and claims, or parts of debts and claims so claimed, are, in his opinion, justly due and proper to be allowed without further evidence, and which of them, in his opinion, ought to be proved by the creditors; and he shall make and file, prior to the time appointed for adjudication, an affidavit, setting forth which of the debts and claims in his opinion are justly due and proper to be allowed without further evidence, and stating his belief that such debts and claims are justly due and proper to be allowed, and the reasons for such belief.

23. At the time appointed for adjudication upon the debts and claims, or at any adjournment thereof, the judge may either allow the debts and claims upon the affidavit of the official liquidator, or may require the same, or any of them, to be proved by the claimants, and adjourn the adjudication thereon to a time to be then fixed; and the official liquidator shall give notice to the creditors whose debts or claims have been so allowed, of such allowance.

24. The official liquidator shall give notice to the creditors whose debts or claims have not been allowed upon his affidavit, that they are required to come in and prove the same by a day to be therein named, being not less than four days after such notice, and to attend at a time to be therein named, being the time appointed by the advertisement, or by adjournment (as the case may be), for adjudication upon such debts and claims.

25. The value of such debts and claims as are made admissible to proof by the 158th section of the said Act, shall, so far as is possible, be estimated according to the value thereof at the date of the order to wind up the company.

26. Interest on such debts and claims as shall be allowed shall be computed, as to such of them as carry interest, after the rate they respectively carry; any creditor whose debt or claim so allowed does not carry interest, shall be entitled to interest, after the rate of 4*l.* per centum per annum, from the date of the order to wind up the company, out of any assets which may remain after satisfying the costs of the winding up, the debts and claims established, and the interest of such debts and claims as by law carry interest (*o*).

27. Such creditors as come in and prove their debts or claims pursuant to notice from the official liquidator, shall be allowed their costs of proof in the same manner as in the case of debts proved in a cause.

(*o*) The latter part of this rule was *ultra vires* and invalid. See *ante*, p. 1009.

28. The result of the adjudication upon debts and claims shall be stated in a certificate to be made by the chief clerk, and certificates as to any of such debts and claims may be made from time to time. All such certificates shall state whether the debts or claims are allowed or disallowed, and whether allowed as against any particular assets, or in any other qualified or special manner.

List of contributories (*p*).

29. The official liquidator shall, with all convenient speed after his appointment, or at such time as the judge shall direct, make out and leave at the chambers of the judge a list of the contributories of the company; and such list shall be verified by the affidavit of the official liquidator, and shall, so far as is practicable, state the respective addresses of, and the number of shares or extent of interest to be attributed to each such contributory, and distinguish the several classes of contributories. And such list may from time to time, by leave of the judge, be varied or added to, by the official liquidator.

30. Upon the list of contributories being left at the chambers of the judge, the official liquidator shall obtain an appointment for the judge to settle the same, and shall give notice in writing of such appointment to every person included in such list, and stating in what character, and for what number of shares or interest such person is included in the list; and in case any variation or addition to such list shall at any time be made by the official liquidator, a similar notice in writing shall be given to every person to whom such variation or addition applies. All such notices shall be served four clear days before the day appointed to settle such list, or such variation or addition.

31. The result of the settlement of the list of contributories shall be stated in a certificate by the chief clerk; and certificates may be made from time to time for the purpose of stating the result of such settlement down to any particular time, or as to any particular person, or stating any variation of the list.

Sales of property (*q*).

32. Any real or personal property belonging to the company may be sold, with the approbation of the judge, in the same manner as in the case of a sale under a decree or order of the Court in a suit, or, if the judge shall so direct, by the official liquidator; and upon any such sale by the official liquidator, the conditions or contracts of sale shall be settled and approved of by the judge, unless he shall otherwise direct; and the judge may, if he thinks fit, direct such conditions and contracts, and the abstract of the title to the property, to be submitted to one of the conveyancing counsel of the Court, under the second of the consolidated general orders (*r*), and may, on any sale by public auction, fix a reserve bidding; and,

(*p*) See the Act, §§ 98 and 99. These Rules 29–31 appear to deal only with the settlement of the list of contributories in a winding up by the Court. They are now superseded, and are retained for purposes of reference. For the present practice, see *ante*, pp. 1034 *et seq.*

(*q*) *Semble*, this rule may still apply in a winding up under supervision or a voluntary winding up, see Rules, 1892, r. 17. See the Act, §§ 94, 95, 103, and *ante*, pp. 979 and 990.

(*r*) See now R. S. C. Order LI. rr. 7–13.

unless on account of the small amount of the purchase-moneys, or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper that the purchase-moneys shall be paid to him, all conditions and contracts of sale shall provide that the purchase-moneys shall be paid by the respective purchasers into the Bank of England, to the account of the official liquidator of the company.

Calls (*s*).

33. Every application to the judge to make any call on the contributories, or any of them, for any purpose authorised by the said Act, shall be made by summons, stating the proposed amount of such call; and such summons shall be served four clear days at least before the day appointed for making the call on every contributory proposed to be included in such call; or, if the judge shall so direct, notice of such intended call may be given by advertisement.

34. When any order for a call has been made, a copy thereof shall be forthwith served upon each of the contributories included in such call, together with a notice from the official liquidator specifying the amount or balance due from such contributory (having regard to the provisions of the said Act) in respect of such call; but such order need not be advertised unless, for any special reason, the judge shall so direct.

35. At the time of making an order for a call, the further proceedings relating thereto shall be adjourned to a time subsequent to the day appointed for the payment thereof, and afterwards from time to time so long as may be necessary; and at the time appointed by any such adjournment, or upon a summons to enforce payment of the call, duly served, and upon proof of the service of the order and notice of the amount due, and non-payment, an order may be made for such of the contributories who have made default, or of such of them against whom it shall be thought proper to make such order, to pay the sum which by such former order and notice they were respectively required to pay, or any less sum which may appear to be due from them respectively.

Payment in of moneys and deposit of securities (*t*).

36. If any official liquidator shall not pay all the moneys received by him into the Bank of England to the account of the official liquidator of the company, within seven days next after the receipt thereof, unless the judge shall have otherwise directed, such official liquidator shall be charged in his account with ten shillings for every 100*l.*, and a proportionate sum for any larger amount, retained in his hands beyond such period, for every seven days during which the same shall have been so retained, and the judge may, for any such retention, disallow the salary or remuneration of such official liquidator.

(*s*) See the Act, §§ 102 and 120. These Rules 33–35 appear to deal only with calls in a winding up by the Court. They are now superseded, and are retained for purposes of reference. For the present practice, see *ante*, pp. 1144 *et seq.*

(*t*) See the Act, §§ 103, 104. These rules, 36–44, applied only in a winding up by the Court. They are now superseded, and are retained for purposes of reference. For the present practice see *ante*, pp. 972, 973. See also Comp. (Winding-up) Act, 1890, § 15, and *ante*, pp. 946 *et seq.*

37. All bills, notes, and other securities payable to the company or to the official liquidator thereof shall, as soon as they shall come to the hands of such official liquidator, be deposited by him in the Bank of England for the purpose of being presented by the bank for acceptance and payment, or for payment only, as the case may be.

38. All orders for payment of calls, balances, or other moneys due from any contributory or other person, shall direct the same to be paid into the Bank of England, to the account of the official liquidator of the company, unless, on account of the smallness of the amount or other cause, it shall, having regard to the amount of the security given by the official liquidator, be thought proper to direct payment thereof to the official liquidator. Provided that where any such order has been made directing payment of a specific sum into the Bank of England, in case it shall be thought proper for the purpose of enabling the official liquidator to issue execution or take other proceedings to enforce the payment thereof, or for any other reason, an order may, either before service of such former order, or after the time thereby fixed for payment, be made, without notice, for payment of the same sum to the official liquidator.

39. At the time of the service of any order for payment into the Bank of England, the official liquidator shall give to the party served a notice, to the purport or effect set forth in form No. 40 in the third schedule hereto, for the purpose of informing him how the payment is to be made; and before the time fixed for such payment the official liquidator shall furnish the cashier of the Bank of England with a certificate, to the purport or effect set forth in form No. 41 in the third schedule hereto, to be signed by such cashier, and delivered to the party paying in the money therein mentioned.

40. For the purpose of enforcing any order for payment of money into the Bank of England an affidavit of the official liquidator, to the purport or effect set forth in form No. 43, in the third schedule hereto, shall be sufficient evidence of the non-payment thereof.

41. All moneys, bills, notes, and other securities paid and delivered into the Bank of England, shall be placed to the credit of the account of the official liquidator of the company; and orders for any such payment and delivery shall direct the same accordingly.

Delivery out of securities, and payment out and investment of moneys (*u*).

42. All bills, notes, and other securities delivered into the Bank of England, shall be delivered out upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge; and moneys placed to the account of the official liquidator shall be paid out upon cheques or orders, signed by the official liquidator, and countersigned by the chief clerk of the judge.

43. All or any part of the money for the time being standing to the credit of the account of the official liquidator at the Bank of England, and not immediately required for the purposes of the winding up, may be invested in the purchase of Bank 3*l.* per cent. Annuities, Reduced 3*l.* per cent. Annuities, New 3*l.* per cent. Annuities, or New 2*l.* 10*s.* per cent. Annuities, in the name of the official liquidator, or in the purchase of exchequer bills. All such investments shall be made by the Bank of

(*u*) See the Act, §§ 103, 104. See note (*t*), *ante*.

England, upon a request signed by the official liquidator, and countersigned by the chief clerk of the judge, and which request shall be a sufficient authority for debiting the account with the purchase money; and such exchequer bills, and in case of an exchange thereof any new exchequer bills, shall be retained by or deposited with the Bank of England, in the name and on behalf of the official liquidator: and such annuities or exchequer bills shall not afterwards be sold or transferred or otherwise dealt with except upon a direction for that purpose, signed by the official liquidator, and countersigned by the chief clerk of the judge, or under an order to be made by the judge.

44. All dividends and interest to accrue due upon any such annuities, shall from time to time be received by the Bank of England, under a power of attorney to be executed by the official liquidator, and placed to the credit of the account of such official liquidator; and such of the exchequer bills as shall from time to time be in course of payment, shall be delivered by the Bank of England to one of their cashiers, who is to receive the interest due thereon, and exchange the same for new bills, in case such new bills are issued, or otherwise to receive the principal and interest due on such of the said bills, so in course of payment, as cannot be exchanged, and pay the said interest, or principal and interest, as the case may be, into the Bank of England to the credit of the account of the official liquidator of the company.

Meetings of creditors or contributories (*x*).

45. When the judge shall direct a meeting of the creditors or contributories of the company to be summoned under the 91st or 149th section of the said Act, the official liquidator shall give notice in writing, seven clear days before the day appointed for such meeting, to every creditor or contributory, of the time and place appointed for such meeting, and of the matter upon which the judge desires to ascertain the wishes of the creditors or contributories; or, if the judge shall so direct, such notice shall be given by advertisement, in which case the object of the meeting need not be stated, and it shall not be necessary to insert such advertisement in the "London Gazette" (*y*).

46. The votes of the creditors or contributories of the company at any meeting summoned by the direction of the judge, may be given either personally or by proxy; but no creditor shall appoint a proxy who is not a creditor of the company whose debt or claim has been allowed, and no contributory shall appoint a proxy who is not a contributory of the company (*z*).

47. The direction of the judge for any meeting of creditors or contributories under the 91st or 149th section of the said Act, and the appointment of a person to act as chairman of any such meeting, shall be testified by a memorandum signed by the chief clerk of the judge (*a*).

(*x*) See the Act, §§ 91 and 149, and *ante*, pp. 926, 927, and 981. Compare the rules applicable to meetings when the company is being wound up by the Court, viz., as to the first meeting, Comp. Winding-up Act, 1890, Schedule I., and Rules, 1890, rr. 43–46, and Rules, 1892, r. 30; and as to meetings generally, Rules, 1890, rr. 47–57, and Rules, 1892, r. 25.

(*y*) See the form of notice or advertisement, *infra*, Schedule 3, No. 45.

(*z*) See the form of appointment of proxy, ib. No. 46. As to the stamp, see *ante*, p. 430.

(*a*) See the form of this memorandum, Schedule 3, No. 47; and for the form of the chairman's report of

Direction or sanction of the judge (b).

48. The sanction of the judge to the drawing, accepting, making, and indorsing of any bill of exchange or promissory note by any official liquidator, shall be testified by a memorandum on such bill of exchange or promissory note, signed by the chief clerk of the judge.

49. Every application for the sanction of the judge to a compromise with any contributory or other person indebted to the company, shall be supported by the affidavit of the official liquidator that he has investigated the affairs of such contributory or person, and stating his belief that the proposed compromise will be beneficial to the company, and his reasons for such belief; and the sanction of the judge thereto shall be testified by a memorandum signed by the chief clerk of the judge, on the agreement of compromise, unless any party shall desire to appeal from the decision of the judge, in which case an order shall be drawn up for that purpose (*d*).

50. The direction or sanction of the judge for any other proceeding or act to be taken or done by the official liquidator, shall be obtained upon summons, and an order shall be drawn up thereon, unless the judge shall otherwise direct (*e*).

Applications to the Court or judge under §§ 137, 138, 141, 167, *and* 168 *of the Act.*

51. Every application under the 137th, 138th, or 141st section of the said Act shall be made by petition or motion, or, if the judge shall so direct, by summons at chambers (*f*); and every application under the 167th or 168th section of the said Act shall be made by petition (*g*).

Orders.

52. All orders made in chambers shall be drawn up in chambers, unless specially directed to be drawn up by the registrar, and shall be entered in the same manner, and in the same office, as other orders made in chambers (*h*).

Advertisements.

53. When an advertisement is required for any purpose, except where

the result of the meeting, see ib. No. 48.

(*b*) See the Act, §§ 95, 159, 160. *Semble*, these rules 48–50, or the last two of them, may still apply, subject to modifications (see Rules, 1892, r. 17), to a voluntary winding up or one under supervision.

(*d*) See the forms of an agreement to compromise; and of the memorandum sanctioning it, Schedule 3, Nos. 50 and 51.

(*e*) See the form of order, ib. No. 52.

(*f*) Now the office of the registrar, see Rules, 1892, r. 17.

(*g*) § 137 relates to appeals against arrangements with creditors: § 138 relates to applications by liquidators in a voluntary winding up: § 141 relates to the appointment of liquidators in a voluntary winding up: and §§ 167 and 168 relate to the prosecution of delinquent directors, &c. For the practice in a winding up by the Court, see Rules, 1890, r. 5, and Rules, 1892, rr. 3–5.

(*h*) Now in the office of the registrar. See Rules, 1892, r. 17.

otherwise directed by these rules, the advertisement shall be inserted once in the "London Gazette," and in such other newspaper or newspapers, and for such number of times as may be directed. The judge may, in such cases as he shall think fit, dispense with any advertisement required by these rules (*i*).

Admission of documents (*j*).

54. Any party to any proceeding in Court or chambers relating to the winding up of a company may, by notice in writing in the Form No. 6, in schedule N. to the Consolidated General Orders (*k*), or to the like effect, call on any other party thereto competent to admit the same, to admit any document, saving all just exceptions; and in case of refusal or neglect so to admit, the costs of proving such document shall be paid by the party so refusing or neglecting, unless the judge shall be of opinion that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice shall have been given, except in cases where the omission to give such notice has been, in the opinion of the taxing master, a saving of expense.

Affidavits (*l*).

55. Where an order shall have been made for the winding up of any company, any person intending to use any affidavit in any proceeding under such order, shall file the same in the Record and Writ Clerks' office (*m*), and give notice thereof to the official liquidator. The person, other than the official liquidator, filing the affidavit, shall not be required to take an office copy thereof, but an office copy thereof shall be taken by the official liquidator, and he shall produce the same at the hearing of any application or proceeding upon which it is intended to be used, unless the judge shall otherwise direct.

Certificate of chief clerk (*n*).

56. The 48th, 49th, 50th, 51st, 52nd, and 55th rules of the 35th of the Consolidated General Orders shall apply to all certificates of the chief clerk in the matter of the winding up of any company; nevertheless certificates on passing the official liquidator's accounts may be approved and signed by the judge without delay, and, upon being so signed, shall be filed and forthwith acted upon (*o*).

(*i*) See *infra*, rules 73 and 74.

(*j*) This rule is still applicable in a voluntary winding up, or one under supervision, Rules, 1892, r. 17.

(*k*) See now R. S. C. Ord. XXXII. r. 3.

(*l*) This rule is still applicable in a voluntary winding up, or one under supervision, see Rules, 1892, r. 17. See *infra*, rule 74.

(*m*) Now in the registrar's office, see Rules, 1892, rr. 11 and 17.

(*n*) See *infra*, rule 74. Now the registrar, see Rules, 1892,

(*o*) These rules related to the practice respecting certificates, and the time for obtaining a review of a certificate, as well before as after it has been signed by the judge. See for the rules now in force, R. S. C. Ord. LV. rr. 65–71; and as to the power of the judge to enlarge the time, *infra*, rule 73. The rule no longer applies to the accounts of a liquidator in a winding up by the Court.

Register and file of proceedings.

57. A register shall be kept of all proceedings in the judge's chambers (*p*), in each matter, in the same manner as required by the 57th rule of the 35th of the Consolidated General Orders (*q*), and no documents or proceedings are to be filed in the judge's chambers, unless the judge shall otherwise direct.

58. All orders, exhibits, admissions, memorandums, and office copies of affidavits, examinations, depositions, and certificates, and all other documents relating to the winding up of any company, shall be filed by the official liquidator, as far as may be, in one continuous file, and such file shall be kept by him, or otherwise, as the judge may from time to time direct. Every contributory of the company, and every creditor thereof whose debt or claim has been allowed, shall be entitled, at all reasonable times, to inspect such file free of charge, and, at his own expense, to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding three-halfpence per folio of seventy-two words; and such file shall be produced in Court, or before the judge, and otherwise, as occasion may require (*r*).

Provisional official liquidators.

59. All the above rules relating to official liquidators shall, so far as the same are applicable, and subject to the directions of the judge in each case, apply to provisional official liquidators (*s*).

Attendance and appearance of parties (*t*).

60. Every person, for the time being, on the list of contributories of the company, left at the chambers of the judge by the official liquidator, and every person having a debt or claim against the company, allowed by the judge, shall be at liberty, at his own expense, to attend the proceedings before the judge, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the judge shall be of opinion that the attendance of any such person upon any proceeding has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person: and such person shall not be entitled to attend any further proceedings until he has paid the same (*u*).

61. The judge may from time to time appoint any one or more of the contributories, or creditors, as he thinks fit, to represent before him, at the expense of the company, all or any class of the contributories or creditors, upon any question as to a compromise with any of the contributories or creditors, or in and about any other proceedings before him relating to the winding up of the company, and may remove the person

(*p*) Registrar's office. See Rules, 1892, r. 17.

(*q*) See now R. S. C. Ord. LV. r. 73.

(*r*) See Comp. Act, 1862, § 156. The rule is now superseded, see Rules, 1892, rr. 11, 17, 32 and 33, and Rules, 26 Nov. 1895.

(*s*) This rule has now no application.

(*t*) See the Comp. Act, 1862, §§ 74, 159, 160, and *infra*, rule 74.

(*u*) See now Rules, 1890, rr. 173, 174.

or persons so appointed. In case more than one person shall be so appointed, they shall unite in employing the same solicitor to represent them.

62. No contributory or creditor shall be entitled to attend any proceedings at the chambers of the judge, unless and until he has entered in a book to be kept there for that purpose his name and address, and the name and address of his solicitor (if any), and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor (*x*).

Services of summonses, notices, &c. (*y*).

63. Services upon contributories and creditors shall be effected (except when personal service is required) by sending the notice, or a copy of the summons or order or other proceeding, through the post in a prepaid letter, addressed to the solicitor of the party to be served (if any) or otherwise to the party himself at the address entered or last entered pursuant to the preceding rule; or if no such entry has been made, then, if a contributory, to his last known address or place of abode; and if a creditor, to the address given by him, pursuant to the foregoing rule 20; and such notice, or copy summons, order, or other proceeding, shall be considered as served at the time the same ought to be delivered in the due course of delivery by the post-office, and notwithstanding the same may be returned by the post-office.

64. No service under these rules shall be deemed invalid by reason that the Christian name, or any of the Christian names of the person on whom service is sought to be made has been omitted, or designated by initial letters, in the list of contributories, or in the summons, order, notice, or other document wherein the name of such contributory or creditor is contained, provided the judge is satisfied that such service is in other respects sufficient.

Termination of winding up (*z*).

65. Upon the termination of the proceedings in chambers for the winding up of any company, a balance-sheet shall be brought in by the official liquidator of his receipts and payments, and verified by his affidavit; and the official liquidator shall pass his final account, and the balance (if any) due thereon shall be certified. And upon payment of such balance, in such manner as the Court or judge shall direct, the recognisance entered into by the official liquidator and his sureties may be vacated.

66. When the official liquidator has passed his final account, and the balance (if any) certified to be due thereon has been paid in such manner as the judge shall direct, a certificate shall be made by the chief clerk that the affairs of the company have been completely wound up; and,

(*x*) See, in a winding up by the Court, Rules, 1890, r. 173a.

(*y*) See, in a winding up by the Court, Rules, 1890, r. 21. As to service on the company, see Comp. Act, 1862, §§ 62 and 63, and *infra*, rule 74. As to service out of the jurisdiction, see *ante*, p. 926.

(*z*) See Comp. Act, 1862, §§ 111–113. These rules, 65–68, appear to relate only to a winding up by the Court, and are now repealed. As to liquidator's release, see Comp. (Winding-up) Act, 1890, § 22. And as to his books, see Rules, 1890, r. 141. And as to his solicitor, ib. r. 174.

in case the company has not been already dissolved, the official liquidator shall, immediately after such certificate has become binding, apply to the judge for an order that the company be dissolved from the date of such order (*b*).

67. When the proceedings for winding up any company have been completed, the file of proceedings and the book containing the official liquidator's account shall be deposited in the Record and Writ Clerk's office (*c*).

Duties of solicitor of official liquidator (*d*).

68. The solicitor of the official liquidator shall conduct all such proceedings as are ordinarily conducted by solicitors of the Court; and where the attendance of his solicitor is required on any proceeding in Court or chambers, the official liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the judge shall direct him to attend.

Forms.

69. The forms set forth or referred to in the third schedule to these orders, with such variations as the circumstances of each case may require, may be used for the respective purposes mentioned in such schedule.

Fees.

70. Solicitors shall be entitled to charge, and be allowed, the fees set forth and referred to in the first schedule hereto, unless the Court or judge shall otherwise specially direct.

71. The fees of Court set forth and referred to in the second schedule hereto shall be paid in relation to proceedings in the Court of Chancery under the Companies Act, 1862, and shall be collected by means of stamps, in the manner prescribed by the 39th of the Consolidated General Orders (*f*).

Taxation of costs.

72. Where an order is made in Court or chambers for payment of any costs, the order shall direct the taxation thereof by the taxing master; except in cases where a gross sum in lieu of taxed costs is fixed by the order, in accordance with the 37th rule of the 40th of the Consolidated General Orders (*g*).

Power of judge (*h*).

73. The power of the Court, and of the judge sitting in chambers, to enlarge or abridge the time for doing any act, or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceeding, is unaffected by these rules.

(*b*) See the form of order, No. 56, *infra*, p. 1435.

(*c*) Now the Central Office, see 42 & 43 Vict. c. 78.

(*d*) This rule appears to relate only to a winding up by the Court, and is now repealed.

(*f*) As to Court fees, see, now, Order as to Supreme Court Fees, 1884, printed in Annual Practice, Vol. II. See, too, orders as to fees, *infra*.

(*g*) See now R. S. C. Ord. LXV., r. 27; and regulation 38a, and R. S. C. Jan. 1902. In a winding up by the Court, see Rules, 1890, rr. 22 *et seq.*

(*h*) See the Act, §§ 83, 119, and 204, and as to the power of enlarging time, R. S. C., Ord. LXIV., r. 7. In a winding up by the Court, see Rules, 1890, r. 176.

General directions (*i*).

74. The general practice of the Court, including the course of proceeding and practice at the judge's chambers, as provided by the statute 15th and 16th Victoria, chapter 80, and the general orders of the Court relative thereto, shall, in cases not provided for by the Companies Act, 1862, or these rules, and so far as the same are applicable and not inconsistent with the said Act or these rules, apply to all proceedings for winding up a company.

Application of rules.

75. These rules apply only to proceedings under the Companies Act, 1862 (*k*).

Commencement of rules.

76. These rules shall take effect and come into operation on and after the 25th day of November, 1862.

Interpretation (*l*).

77. The 1st Rule of the 23rd of the Consolidated General Orders, and the general interpretation clause therein, shall be deemed to extend and apply to the rules of this order; and such rules shall have the effect of and be deemed to be General Orders of the Court.

WESTBURY, C.
JOHN ROMILLY, M.R.
RICHD. T. KINDERSLEY, V.-C.
JOHN STUART, V.-C.
W. P. WOOD, V.-C.

THE FIRST SCHEDULE.

FEES AND CHARGES TO BE ALLOWED TO SOLICITORS.

	£	s.	d.
For preparing and drawing up every order made at chambers, and attending for same, and at the registrar's office to get same entered	0	13	4
For engrossing every order, in addition to the above fee, per folio	0	0	4

For other duties performed, such of the fees on the higher scale authorised by the 2nd rule of the 38th of the Consolidated General Orders, and the regulations as to solicitor's fees subjoined thereto, as are applicable; except that the special fee allowed on creditor's claims is not to apply.

Where, under such regulations, a fee of 3 guineas may be

(*i*) See the Act, § 170, and in a winding up by the Court, Rules, 1890, r. 178.

(*k*) They now only apply in the winding up of a company by the Court under an order made on or before the 31st December, 1890 (Rules, 1890, r. 180), and, when applicable (with certain modifications), in a voluntary winding up and a winding up subject to supervision, Rules, 1892, r. 11.

(*l*) See now Rules, 1892, r. 17.

allowed for attending any summons or other appointment at the judge's chambers, the same may be increased to any sum not exceeding 5 guineas.

The fee of 2*s.* 6*d.* allowed by such regulations for notices and services shall be reduced to 1*s.* 6*d.*, where the service may be effected as provided by the above rule 63.

The usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing and amount to more than £3.

THE SECOND SCHEDULE (*m*).

FEES TO BE COLLECTED BY MEANS OF STAMPS.

In the judge's chambers.

	£	s.	d.
For every summons	0	3	0
For every order drawn up by the chief clerk	0	5	0
For every advertisement	1	0	0
For every certificate	0	5	0
For every oath, affirmation, declaration, or attestation upon honour	0	1	6

In the registrar's office.

For every order made in Court	1	0	0
For every order made in chambers	0	5	0
For every office copy of an order	0	5	0

In the examiner's office.

The same fees as those directed to be paid and collected in such office by the 2nd rule of the 39th of the Consolidated General Orders (*m*), and the regulations subjoined thereto.

In the record and writ clerk's office, and report office.

Such of the fees directed to be paid and collected in such office by the 2nd rule of the 39th of the Consolidated General Orders, and the regulations subjoined thereto, as are applicable.

In the taxing master's office.

The same fees as those directed to be paid and collected by the 2nd rule of the 39th of the Consolidated General Orders, and the regulations subjoined thereto.

In the office of the Lord Chancellor's principal secretary.

For every petition	1	0	0

In the office of the Secretary of the rolls.

For every petition	1	0	0

(*m*) See for present rules as to fees, and the orders as to fees, *infra*. Order as to Supreme Court Fees, 1884,

THE THIRD SCHEDULE.

FORMS (*n*).

No. 45. *Notice or advertisement of meeting of creditors or contributories.* [Rules 45, 46.]

In the matter, &c.

Notice is hereby given that the Master of the Rolls [*or*, Vice-Chancellor] has directed a meeting of the creditors [*or*, contributories] of the above-named company to be summoned pursuant to the above statute, for the purpose of ascertaining their wishes as to [*state the object for which meeting called, unless notice is by advertisement, in which case say*, certain matters relating to the winding up of the said company], and that such meeting will be held on day, the day of , 186 , at o'clock in the noon, at in the county of , at which time and place all the creditors [*or*, contributories] of the said company are requested to attend. [The said judge has appointed H. T., of &c., to act as chairman of such meeting.]

Dated this day of 186 .

R. P. H., Official Liquidator.

No. 46. *Appointment of proxy to vote at meeting of creditors or contributories.* [Rule 46.]

In the matter, &c.

I, W. S., of in the county of , being a creditor [*or*, contributory] of the above-named company, hereby appoint of as my proxy to vote for me, and on my behalf, at the meeting of the creditors [*or*, contributories] of the said company, summoned by direction of the Master of the Rolls [*or*, Vice-Chancellor], to be held on the day of and at any adjournment thereof.

As witness my hand, this day of 186 .

W. S.

Signed by the said W. S.,
in the presence of
J. M., of, &c.

No. 47. *Memorandum of appointment of a person to act as chairman at meeting of creditors or contributories.* [Rule 47.]

In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] has appointed Mr. H. T., of &c., one of the creditors [*or*, contributories] of the above-named company, to act as chairman of a meeting of the creditors [*or*, contributories] of the said company, summoned by direction of the said judge

(*n*) With the exception of Form No. 56, only such of the forms are here reprinted as are referred to in rules which appear to be applicable to proceedings for winding up a company either voluntarily or under the supervision of the Court. The forms are reprinted verbatim. As to the proper title, see, now, Rules, 1892, r. 6 (1). A liquidator in a voluntary winding up or a winding up under supervision is not, and never was, called an "official" liquidator, and that title is now abolished, Comp. (Winding-up) Act, 1890, § 4 (3).

APPENDIX VII. Forms.

pursuant to the above statute, to be held on day, the day of , 186 , at o'clock in the noon, at , in the county of , and to report the result of such meeting to the said judge.

The said meeting is summoned for the purpose of ascertaining the wishes of the creditors [*or*, contributories] of the said company as to [*state the object for which meeting called*]; and at such meeting the votes of the creditors [*or*, contributories] may be given either personally or by proxy.

Dated this day of , 186 .

G. H., Chief Clerk.

No. 48. *Chairman's report of result of meeting of creditors or contributories.* [Rules 45, 46, 47.]

In the matter, &c.

I, H. T., the person appointed by the Master of the Rolls [*or*, Vice-Chancellor] to act as chairman of a meeting of the creditors [*or*, contributories] of the above-named company, summoned by advertisement [*or*, notice] dated the day of , 186 , and held on the day of 186 , at in the county of , do hereby report to the said judge the result of such meeting as follows:—

The said meeting was attended either personally or by proxy, by creditors to whom debts against the said company have been allowed, amounting in the whole to the value of £ [*or*, by contributories, holding in the whole shares in the said company, and entitled respectively, by the regulations of the company, to the number of votes hereinafter mentioned].

The question submitted to the meeting was, whether the creditors [*or*, contributories] of the said company approved of the proposal of the official liquidator of the said company, that, &c. [*as the case may be*], and wished that such proposal should be adopted and carried into effect.

The said meeting was unanimously of opinion that the said proposal should [*or*, should not] be adopted and carried into effect [*or*, The result of the voting upon such question was as follows:—]

The undermentioned creditors [*or*, contributories] voted in favour of the said proposal being adopted and carried into effect:—

Name of creditor [*or*, contributory].	Address.	Value of debt [*or*, number of shares].	Number of votes conferred on each contributory by the regulations of the company.

The undermentioned creditors [*or*, contributories] voted against the said proposal being adopted and carried into effect:—

Name of creditor [*or*, contributory].	Address.	Value of debt [*or*, number of shares].	Number of votes conferred on each contributory by the regulations of the company.

Dated this day of 186 .

(Signed) H. T., Chairman.

No. 50. *Memorandum of agreement of compromise with a contributory.* [Rule 49].

In the matter, &c.

Memorandum of agreement entered into this day of 186 , between R. P. H., of &c., the official liquidator of the above-named company of the one part, and S. B., of &c., one of the contributories of the said company, of the other part.

Whereas the said S. B. has been settled on the list of contributories of the said company as a contributory in respect of shares in the said company. And whereas by an order made by the Master of the Rolls [*or*, Vice-Chancellor], dated the day of 186 , a call of £ per share was made on all the contributories of the said company, and there is now due from the said S. B. to the said company the sum of £ in respect of the said call. And whereas the said S. B. has proposed to pay to the said official liquidator the sum of £ by way of compromise, and in satisfaction and discharge of the said sum of £ , and of all liability whatsoever as a contributory of the said company. And whereas the said official liquidator having investigated the affairs of the said S. B., and believing that such compromise will be beneficial to the said company, hath, in exercise of the power for that purpose given to him by the above statute, agreed to accept the same, subject to the sanction of the said judge, and to the conditions and agreements hereinafter contained. Now it is hereby agreed by and between the said parties hereto:

1st. That the said official liquidator shall, before the day of next, apply to the said judge at chambers to sanction this agreement of compromise.

2nd. That upon this agreement being sanctioned by the said judge, the said S. B. shall within days next after such sanction pay to the said official liquidator the said sum of £ , and when thereto required, shall do and execute all such acts and deeds as may be necessary for transferring, or surrendering and releasing, to the said official

liquidator on behalf of the said company, or in such manner as the said judge may direct, the said shares held by the said S. B. in the said company, and all claim and demand whatsoever which the said S. B. has, or may have, against the said company in respect of the said shares, or the distribution of the assets of the said company, or otherwise howsoever.

3rd. That the said sum of £ , and the transfer or surrender and release of the said shares and interest of the said S. B., as aforesaid, shall be accepted by the said official liquidator as, and be deemed and taken to give to the said S. B. a full and complete discharge from all calls and liabilities, claims and demands whatsoever, which the said company, or the official liquidator thereof, now has or may hereafter have, or be entitled to, against the said S. B., in respect of his being or having been the holder of the said shares or otherwise, as a contributory of the said company.

4th. That in case this agreement shall not be sanctioned by the said judge, it shall cease and determine, and the said official liquidator and the said S. B. shall be remitted to their original rights with respect to each other, as if this agreement had not been entered into.

5th. That in case this agreement shall be sanctioned by the said judge, and the said S. B. shall not in all respects perform the same on his part, the official liquidator shall be at liberty, with the sanction of the said judge, and without notice to the said S. B., to enforce the performance thereof, or, with the like sanction, to give notice to the said S. B. that he abandons this agreement, whereupon the same shall cease and determine, and the said official liquidator shall be entitled to proceed against the said S. B. to enforce payment of the said sum of £ , or so much thereof as shall then remain due and unpaid, as if this agreement had not been entered into.

R. P. H., Official Liquidator.
S. B.

Witness to the signatures of the said R. P. H. and S. B., C. D., of &c.

No. 51. *Memorandum of sanction of judge to agreement of compromise.* [Rule 49.]

In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] has sanctioned this agreement of compromise.

G. H.,
Chief Clerk.

No. 52. *Order or memorandum of the sanction of the judge for certain acts to be done by the official liquidator.* [Rule 50.]

The Master of the Rolls [*or*, Vice-chancellor] at chambers. day of 186 .
In the matter, &c.

The Master of the Rolls [*or*, Vice-Chancellor] doth hereby sanction [*or*, has sanctioned] the following proceedings being taken [*or*, acts being done] by the official liquidator of the above-named company, namely [*state the proceedings to be taken or acts to be done as*,] the bringing [*or*, instituting] and prosecuting an action at law [*or*, suit in equity], in

the name and on behalf of the said company, against [*or*, defending an action at law [*or*, suit in equity] brought [*or*, instituted] against the said company by] K. M., of &c., to recover a debt or sum of £ alleged to be due from [*or*, to] the said K. M. to [*or*, from] the said company, &c.

G. H.,
Chief Clerk.

No. 54. *Summons for persons to attend at chambers to be examined.* [25 & 26 Vic. c. 89, s. 115.]

In Chancery.

In the matter, &c.

A. B., &c., and E. F., are hereby severally summoned to attend at the chambers of the Master of the Rolls [*or*, Vice-Chancellor], in the Rolls Yard, Chancery Lane [*or*, No. , Lincoln's Inn], in the county of Middlesex, on day of 186 , at of the clock in the noon, to be examined on the part of the official liquidator [*or*, of W. D., of &c.], for the purpose of proceedings directed by the Master of the Rolls [*or*, the said Vice-Chancellor] to be taken before me in the above matter. [And the said A. B. is hereby required to bring with him and produce, at the time and place aforesaid, a certain indenture [*describe documents*] and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the above-named company.]

Dated this day of 186 .

G. H.,
Chief Clerk.

This summons was taken out by Messrs. C. & D., of in the county of , solicitors for the official liquidator [*or*, for the said W. D.]

No. 56. *Order to dissolve the company.* [Rule 66] (*q*).

The Master of the Rolls [*or*, Vice-Chancellor] at chambers. , the day of 186 . In the matter, &c.

Upon the application of the official liquidator of the above-named company, and upon reading an order dated the day of , and the chief clerk's certificate, dated the day of , whereby it appears that the affairs of the said company have been completely wound up, and that the balance of £ , due from [*or*, to] the official liquidator has been paid in manner directed by the said order, it is ordered that the said company be dissolved, as from this day of 186 , and that the recognisance dated the day of 186 , entered into by the official liquidator, together with W. B. and T. P., his sureties, be vacated.

WESTBURY, C.
JOHN ROMILLY, M.R.
RICHD. T. KINDERSLEY, V.-C.
JOHN STUART, V.-C.
W. P. WOOD, V.-C.

(*q*) See Comp. Act, 1862, § 111. No form of order is given in the Rules of 1890.

ORDER AND RULES IN CHANCERY ISSUED PURSUANT TO THE COMPANIES ACT, 1867.

ORDER OF COURT.

Saturday, the 21st day of March, 1868, *as amended by order of 2nd March,* 1869 (*r*).

The right honorable Hugh MacCalmont Baron Cairns, Lord High Chancellor of Great Britain, with the advice and consent of the right honorable John Lord Romilly, Master of the Rolls, the honorable the Vice-Chancellor Sir John Stuart, and the honorable the Vice-Chancellor Sir Richard Malins, doth hereby, in pursuance and execution of the powers given to him by "The Companies Act, 1867," and of all other powers and authorities enabling him in that behalf, order and direct in manner following:—

Petition for winding up (*s*).

1. Every petition which shall, after this order comes into operation, be presented for the winding up of any company by the Court, or subject to the supervision of the Court, and all notices, affidavits, and other proceedings under such petition, shall be intituled in the matter of "The Companies Acts, 1862 and 1867," and of the company to which such petition shall relate.

Petition to reduce capital (*t*).

2. Every petition for an order confirming a special resolution for reducing the capital of a company, and all notices, affidavits, and other proceedings under such petition, shall be intituled in the matter of "The Companies Act, 1867" (*u*), and of the company in question (*x*).

3. No such petition as mentioned in the 2nd rule of this order shall be placed in the list of petitions by the secretary of the Lord Chancellor or of the Master of the Rolls, as the case may be, until after the expiration of eight clear days from the filing of such certificate as is mentioned in the 14th rule of this order.

4. When any such petition as last aforesaid has been presented, application may be made, *ex parte* by summons in chambers, to the judge to whose Court the petition is attached, for directions as to the proceedings

(*r*) The order of March, 1868, has been amended by an order of 2nd March, 1869. (See W. N. of that date.) The amendments affect Rules 8 and 14, which are here printed as amended.

(*s*) This rule is obsolete. See, now, Rules, 1892, r. 6 (1).

(*t*) See Act of 1867, §§ 11 *et seq.*, the Act of 1877, and *ante*, pp. 556 *et seq.* These rules are directory. See *Lamson Store, &c., Co.* [1895], 2 Ch. 726.

(*u*) Though the judge who exercises the jurisdiction in winding up may entertain such a petition, it should not be intituled in the matter of the Companies (Winding-up) Act, 1890. *Aluminium Co.*, W. N. 1894, 6.

(*x*) The company's name should be first, *Woolley Coal Co.*, W. N. 1891, 19.

to be taken for settling the list of creditors entitled to object to the proposed reduction, and the judge may thereupon fix the date with reference to which the list of such creditors is to be made out, pursuant to the 13th section of the Companies Act, 1867; and may, either at the same time or afterwards, as he shall think fit, give such directions as are mentioned in the 5th and 6th rules of this order. The order upon such summons may be in the form No. 1 in the schedule hereto, with such variations as the circumstances of the case may require.

5. Notice of the presentation of the petition shall be published at such times, and in such newspapers as the judge shall direct, so that the first insertion of such notice be made not less than one calendar month before the day of the date fixed as mentioned in the 4th rule of this order. Such notice may be in the form No. 2 in the schedule hereto, with such variations as the circumstances of the case may require.

6. The company shall, within such time as the judge shall direct, file in the office of the clerks of records and writs (*y*), an affidavit made by some officer or officers of the company competent to make the same, verifying a list containing the names and addresses of the creditors of the company at the date fixed as mentioned in the 4th rule of this order, and the amounts due to them respectively, and leave the said list and an office copy of such affidavit, at the chambers of the judge.

7. The person making such affidavit shall state therein his belief that such list is correct, and that there was not at the date so fixed as aforesaid any debt or claim, which, if that date were the commencement of the winding up of the company, would be admissible in proof against the company, except the debts set forth in such list, and shall state his means of knowledge of the matters deposed to in such affidavit. Such affidavit may be in the form No. 3 in the schedule hereto, with such variations as the circumstances of the case may require.

8. Copies of such list containing the names and addresses of the creditors and the total amount due to them, but omitting the amounts due to them respectively, or (as the judge shall think fit) complete copies of such list shall be kept at the registered office of the company, and at the offices of their solicitors and London agents (if any), and any person desirous of inspecting the same may at any time, during the ordinary hours of business, inspect and take extracts from the same on payment of the sum of one shilling (*z*).

9. The company shall, within seven days after the filing of such affidavit, or such further time as the judge may allow, send to each creditor whose name is entered in the said list, a notice stating the amount of the proposed reduction of capital, and the amount of the debt for which such creditor is entered in the said list, and the time (such time to be fixed by the judge) within which, if he claims to be a creditor for a larger amount, he must send in his name and address, and the particulars of his debt or claim, and the name and address of his solicitor (if any) to the solicitor of the company; and such notice shall be sent through the post in a prepaid letter addressed to each creditor at his last known address or place of abode, and may be in the form or to the effect of the form No. 4, set forth in the schedule hereto, with such variations as the circumstances of the case may require.

(*y*) Now the Central Office, see 42 & 43 Vict. c. 78.

(*z*) *Ante*, p. 1436, note (*r*).

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10. Notice of the list of creditors shall, after the filing of the affidavit mentioned in the 6th of these rules, be published at such times, and in such newspapers, as the judge shall direct. Every such notice shall state the amount of the proposed reduction of capital, and the places where the aforesaid list of creditors may be inspected, and the time within which creditors of the company who are not entered on the said list, and are desirous of being entered therein, must send in their names and addresses, and the particulars of their debts or claims, and the names and addresses of their solicitors (if any) to the solicitor of the company; and such notice may be in the form No. 5, set forth in the said schedule hereto, with such variations as the circumstances of the case may require.

11. The company shall, within such time as the judge shall direct, file in the office of the clerks of records and writs (*a*) an affidavit made by the person to whom the particulars of debts or claims are by such notices as are mentioned in the 9th and 10th rules of this order, required to be sent in, stating the result of such notices respectively, and verifying a list containing the names and addresses of the persons (if any), who shall have sent in the particulars of their debts or claims in pursuance of such notices respectively, and the amounts of such debts or claims, and some competent officer or officers of the company shall join in such affidavit, and shall in such list distinguish which (if any) of such debts and claims are wholly, or as to any and what part thereof, admitted by the company, and which (if any) of such debts and claims are wholly, or as to any and what part thereof, disputed by the company. Such affidavit may be in the form No. 6 in the schedule hereto, with such variations as the circumstances of the case may require; and such list, and an office copy of such affidavit, shall, within such time as the judge shall direct, be left at the chambers of the judge.

12. If any debt or claim, the particulars of which are so sent in, shall not be admitted by the company at its full amount, then, and in every such case, unless the company are willing to set apart and appropriate in such manner as the judge shall direct the full amount of such debt or claim, the company shall, if the judge think fit so to direct, send to the creditor a notice that he is required to come in and prove such debt or claim, or such part thereof as is not admitted by the company, by a day to be therein named, being not less than four clear days after such notice, and being the time appointed by the judge for adjudicating upon such debts and claims, and such notice shall be sent in the manner mentioned in the 9th rule of this order, and may be in the form No. 7, in the schedule hereto, with such variations as the circumstances of the case may require.

13. Such creditors as come in to prove their debts or claims in pursuance of any such notice as is mentioned in the 12th of these rules, shall be allowed their costs of proof against the company, and be answerable for costs, in the same manner as in the case of persons coming in to prove debts under a decree in a cause.

14. The result of the settlement of the list of creditors shall be stated in a certificate by the chief clerk, and such certificate shall state what debts or claims (if any) have been disallowed, and shall distinguish the debts or claims the full amount of which the company are willing to set

(*a*) Now the Central Office, see *ante*, p. 1437, note (*y*).

apart and appropriate, and the debts or claims (if any) the amount of which has been fixed by inquiry and adjudication in manner provided by section 14 of the said Act, and the debts or claims (if any) the full amount of which is not admitted by the company, nor such as the company are willing to set apart and appropriate, and the amount of which has not been fixed by inquiry and adjudication as last aforesaid; and shall show which of the creditors have consented in writing to the proposed reduction, and the total amount of the debts due to them, and the total amount of the debts or claims the payment of which has been secured in manner provided by the said 14th section, and the persons to or by whom the same are due or claimed; but it shall not be necessary to show in such certificate the several amounts of the debts or claims of any persons who have consented in writing to the proposed reduction or the payment of whose debts or claims has been secured as aforesaid (*b*).

15. After the expiration of eight clear days from the filing of such last mentioned certificate, the petition may be placed in the list of petitions upon a note from the chief clerk to the secretary of the Lord Chancellor or of the Master of the Rolls, as the case may be, stating that the certificate has been filed and become binding.

16. Before the hearing of the petition, notices stating the day on which the same is appointed to be heard shall be published at such times and in such newspapers as the judge shall direct. Such notices may be in the form No. 8, in the schedule hereto, with such variations as the circumstances of the case may require.

17. Any creditor settled on the said list whose debt or claim has not, before the hearing of the petition, been discharged or determined, or been secured in manner provided by the 14th section of the said Act, and who has not, before the hearing, signed a consent to the proposed reduction of capital, may, if he think fit, upon giving two clear days' notice to the solicitor of the company of his intention so to do, appear at the hearing of the petition and oppose the application.

18. Where a creditor who appears at the hearing under the last preceding rule, is a creditor the full amount of whose debt or claim is not admitted by the company, and the validity of such debt or claim has not been inquired into and adjudicated upon under section 14 of the said Act, the costs of and occasioned by his appearance shall be dealt with as to the Court shall seem just, but in all other cases a creditor appearing under the last preceding rule shall be entitled to the costs of such appearance, unless the Court shall be of opinion that in the circumstances of the particular case his costs ought not to be allowed.

19. When the petition comes on to be heard, the Court may, if it shall so think fit, give such directions as may seem proper with reference to the securing in manner mentioned in section 14 of the said Act the payment of the debts or claims of any creditors who do not consent to the proposed reduction; and the further hearing of the petition may, if the Court shall think fit, be adjourned for the purpose of allowing any steps to be taken with reference to the securing in manner aforesaid the payment of such debts or claims.

20. Where the Court makes an order confirming a reduction, such order shall give directions in what manner, and in what newspapers, and at

(*b*) See *ante*, p. 1436, note (*r*)

what times, notice of the registration of the order and of such minute as mentioned in the 15th section of "The Companies Act, 1867," is to be published; and shall fix the date until which the words "and reduced" are to be deemed part of the name of the company as mentioned in the 10th section of the same Act.

Fees.

21. Solicitors shall be entitled to charge and be allowed for duties performed under "The Companies Act, 1867," the same fees as they shall for the time being be entitled to charge and be allowed for the like duties performed under "The Companies Act, 1862," unless the Court or judge shall otherwise specially direct.

22. The same fees of Court shall be paid in relation to proceedings in Chancery under "The Companies Act, 1867," as shall for the time being be payable in relation to like proceedings in Chancery under "The Companies Act, 1862," and shall be collected by stamps in manner provided by the general orders of the Court.

General directions.

23. The general orders and practice of the Court, including the course of proceeding and practice in the judges' chambers, shall, in cases not provided for by "The Companies Act, 1867," or these rules, so far as such orders and practice are applicable and not inconsistent with the said Act or with these rules, apply to all proceedings in the Court of Chancery under the said Act.

24. The power of the Court and of the judge sitting in chambers to enlarge or abridge the time for doing any act or taking any proceeding, to adjourn or review any proceeding, and to give any direction as to the course of proceeding, shall be the same in proceedings under "The Companies Act, 1867," as in proceedings under the ordinary jurisdiction of the Court (c).

Commencement of order.

25. This order shall take effect and come into operation on the 15th day of April, 1868, and shall apply to all proceedings in Chancery under the said Act, whether commenced before or after that day, but every proceeding taken under the said Act before that day shall have the same validity as it would have had if this order had not been made.

Interpretation.

26. The general interpretation clause of the Consolidated General Orders shall be deemed to extend and apply to the rules of this order, and this order shall be deemed a general order of this Court.

CAIRNS, C.
ROMILLY, M.R.
JOHN STUART, V.-C.
RICHARD MALINS, V.-C.

c) See now R. S. C., Order LXIV., r. 7.

THE SCHEDULE.

No. 1. *Form of order.* [Rule 4.]

The Master of the Rolls [*or* Vice-Chancellor] Sir at Chambers.

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

Upon the application of the petitioners by summons, dated , and upon hearing the solicitor for the petitioners, and on reading the petition on the day of , preferred unto the Right Honourable the Lord High Chancellor of Great Britain [*or* Master of the Rolls], it is ordered that an inquiry be made what are the debts, claims, and liabilities of or affecting the said company on the day of , 186 , and that notice of the presentation of the said petition be inserted in [the newspapers] on the day of and [other times of insertion], and that a list of the persons who are creditors of the company on the said day of , and an office copy of the affidavit verifying the same, be left at the chambers of the judge on or before the day of .

No. 2. [See Rule 5.]

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

Notice is hereby given, that a petition for confirming a resolution reducing the capital of the above company from £ to £ , was on the day presented to [the Lord Chancellor, *or* Master of the Rolls], and is now pending; and that the list of creditors of the company is to be made out as for the day of , 186 .

C. and D. of [Agents for A. and B., of].
Solicitors to the company.

No. 3. *Affidavit verifying list of Creditors.* [Rule 7.]

In Chancery.

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

I, A. B., of, &c., make oath and say as follows:—

1. The paper writing now produced and shown to me, and marked with the letter A., contains a list of the creditors of and persons having claims upon the said company on the day of , 186 (the date fixed by the order in this matter, dated), together with their respective addresses, and the nature and amount of their respective debts or claims, and such list is, to the best of my knowledge, information, and

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belief, a true and accurate list of such creditors and persons having claims on the day aforesaid.

2. To the best of my knowledge and belief there was not, at the date aforesaid, any debt or claim which, if such date were the commencement of the winding up of the said company, would be admissible in proof against the said company other than and except the debts set forth in the said list. I am enabled to make this statement from facts within my knowledge as the of the said company, and from information derived upon investigation of the affairs and the books, documents, and papers of the said company.

Sworn, &c.

List of Creditors referred to in the last Form.

A.

In the matter, &c.

This list of creditors marked A. was produced and shown to A. B., and is the same list of creditors as is referred to in his affidavit sworn before me this day of , 186 .

X. Y., &c.

Names, Addresses, and Description of the Creditors.	Nature of Debt or Claim.	Amount of Debt or Claim.

No. 4. [See Rule 9.]

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

To Mr.

You are requested to take notice that a petition has been presented to the Court of Chancery to confirm a special resolution of the above company, for reducing its capital to £ , and that in the list of persons admitted by the company, to have been on the day of , creditors of the company, your name is entered as a creditor [here state the amount of the debt or nature of the claim].

If you claim to have been on the last-mentioned day a creditor to a larger amount than is stated above, you must, on or before the day of , send in the particulars of your claim, and the name and address of your solicitor (if any), to the undersigned, at . In default of your so doing, the above entry in the list of creditors will in

all the proceedings under the above application to reduce the capital of the company be treated as correct.

Dated this day of , 18 .

A. B.,
Solicitor for the said company.

No. 5. [See Rule 10.]

In the matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

Notice is hereby given, that a petition has been presented to the Court of Chancery for confirming a resolution of the above company, for reducing its capital from £ to £ . A list of the persons admitted to have been creditors of the company on the day of , 186 , may be inspected at the offices of the company at , or at the office of , at any time during usual business hours, on payment of the charge of one shilling.

Any person who claims to have been on the last-mentioned day and still to be a creditor of the company, and who is not entered on the said list and claims to be so entered, must on or before the day of send in his name and address, and the particulars of his claim, and the name and address of his solicitor (if any), to the undersigned, at , or in default thereof he will be precluded from objecting to the proposed reduction of capital.

Dated this day of , 18 .

A. B.,
Solicitor for the said company.

No. 6. [Rule 11.]

In Chancery.

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

We, C. D., of, &c. [the secretary of the said company], E. F., of, &c. [the solicitor of the said company], and A. B., of, &c. [the managing director of the said company], severally make oath and say as follows:—

I, the said C. D. for myself, say as follows:—

1. I did, on the day of , 186 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me, and marked B., upon each of the respective persons whose names, addresses, and descriptions appear in the first column of the list of creditors marked A., referred to in the affidavit of , filed on the day of , 186 . [Rule 9.]

2. I served the said respective copies of the said notice by putting such copies respectively duly addressed to such persons respectively, according to their respective names and addresses appearing in the said list (being the last known addresses or places of abode of such persons respectively), and with the proper postage stamps affixed thereto as prepaid letters, into

APPENDIX VII. Forms.

the post-office receiving house, No. , in Street, in the county of , between the hours of and of the clock in the noon of the said day of .

And I, the said E. F., for myself, say as follows:—

If notice issued under rule 10.

3. A true copy of the notice now produced and shown to me, and marked C., has appeared in the of the day of , 186 , the of the day of , 186 , &c.

[Rule 11.]

4. I have, in the paper writing now produced and shown to me, and marked D., set forth a list of all claims, the particulars of which have been sent in to me pursuant to the said Notice B. now produced and shown to me by persons claiming to be creditors of the said company for larger amounts than are stated in the list of creditors marked A., referred to in the affidavit of , filed on the day of , 186 .

If notice issued under rule 10.

5. I have, in the paper writing now produced and shown to me, marked E., set forth a list of all claims, the particulars of which have been sent in to me pursuant to the notice referred to in the third paragraph of this affidavit by persons claiming to be creditors of the said company on the day of , 186 , not appearing on the said list of creditors, marked A., and who claimed to be entered thereon.

And we, C. D. and A. B., for ourselves, say as follows:—

[Rule 11.]

6. We have in the first part of the said paper writing, marked D. (now produced and shown to us), and also in the first part of the said paper writing, marked E. (also produced and shown to us), respectively set forth such of the said debts and claims as are admitted by the said company to be due wholly or in part, and how much is admitted to be due in respect of such of the same debts and claims respectively as are not wholly admitted.

[Rule 11.]

7. We have, in the second part of each of the said paper writings, marked D. and E., set forth such of the said debts and claims as are wholly disputed by the said company.

8. In the said Exhibits D. and E. are distinguished such of the debts, the full amounts whereof are proposed to be set apart and appropriated in such manner as the judge shall direct.

Sworn, &c.

Exhibit D., referred to in the last-mentioned affidavit.

D.

In the matter, &c.

Lists of debts and claims of which the particulars have been sent in to by persons claiming to be creditors of the said company for *larger amounts* than are stated in the list of creditors made out by the company.

This paper writing, marked D., was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit sworn before me this day of , 186 .

X. Y., &c.

FIRST PART.

Debts and claims wholly or partly admitted by the company.

Names, Addresses, and Descriptions of Creditors.	Particulars of Debt or Claim.	Amount claimed.	Amount admitted by the Company to be owing to Creditor.	Debts proposed to be set apart and appropriated in full although disputed.

SECOND PART.

Debts and claims wholly disputed by the company.

Names, Addresses, and Descriptions of Claimants.	Particulars of Claim.	Amount claimed.	Debts proposed to be set apart and appropriated in full although disputed.

Exhibit E., referred to in the last affidavit.

E.

In the matter, &c.

Lists of debts and claims of which the particulars have been sent in to Mr. by persons claiming to be creditors of the company, and to be entered on the list of creditors made out by the company.

This paper writing, marked E., was produced and shown to C. D., E. F., and A. B., respectively, and is the same as is referred to in their affidavit, sworn before me, this day of , 186 .

X. Y., &c.

FIRST PART.

[Same as in Exhibit D.]

SECOND PART.

[Same as in Exhibit D.]

NOTE.—The names are to be inserted alphabetically.

No. 7. [See Rule 12.]

In the Matter of the Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

To Mr.

You are hereby required to come in and prove the debt claimed by you against the above company, by filing your affidavit and giving notice thereof to Mr. , the solicitor of the company, on or before the day of next; and you are to attend by your solicitor at the Chambers of [the Master of the Rolls, in the Rolls Yard, Chancery Lane, *or* the Vice-Chancellor at No. Lincoln's Inn], in the county of Middlesex, on the day of , 18 , at o'clock in the noon, being the time appointed for hearing and adjudicating upon the claim, and produce any securities or documents relating to your claim.

In default of your complying with the above directions you will [be precluded from objecting to the proposed reduction of the capital of the company] *or* [in all proceedings relative to the proposed reduction of the capital of the company, be treated as a creditor for such amount only as is set against your name in the list of creditors].

Dated this day of , 18 .

A. B.,
Solicitor for the said company.

No. 8. [See Rule 16.]

In the matter of The Company, Limited and Reduced; and in the matter of "The Companies Act, 1867."

Notice is hereby given that a petition presented to the [Lord Chancellor] *or* [the Master of the Rolls], on the day of , for confirming a resolution reducing the capital of the above company from £ to £ , is directed to be heard before [the Vice-Chancellor] *or* [the Master of the Rolls], on the day of , 186 .

C. and D. of [Agents for E. and F. of].
Solicitors for the company.

CAIRNS, C.
ROMILLY, M.R.
JOHN STUART, V.C.
RICHARD MALINS, V.C.

GENERAL RULES MADE PURSUANT TO SECTION 26 OF THE COMPANIES (WINDING-UP) ACT, 1890.

THE COMPANIES (WINDING-UP) RULES, 1890,

AS AMENDED BY

THE RULES DATED THE 30TH APRIL, 1891 (*a*); THE COMPANIES (WINDING-UP) RULES, 1895 (*b*); THE RULE DATED THE 19TH MAY, 1896 (*c*); AND THE COMPANIES (WINDING-UP) RULES, 1899 (*d*).

Preliminary.

Short title and commencement.

1. These Rules may be cited as "The Companies Winding-up Rules, 1890." They shall come into operation on the first day of January, one thousand eight hundred and ninety-one.

Interpretation of terms.

2. In these Rules (*e*), unless the context or subject-matter otherwise requires,—

(a.) "The Acts" means the Companies Acts, 1862 to 1890.

"The Company" means a company which is being wound up, or against which proceedings to have it wound up have been commenced.

"*The Court*" *includes a Judge of the Court, and a chief clerk of the Chancery Division of the High Court, or other officer of the Court when exercising the powers of the Court pursuant to the Acts or these Rules, or the practice of the Court* (*f*).

"Creditor" includes a corporation, and a firm of creditors in partnership.

"Gazetted" means published in the London Gazette.

"*Judge*" *means in the High Court the Judge to whom the petition to wind up the company is assigned* (*f*), and in any other Court the Judge thereof or officer who exercises the powers of the Judge thereof.

"Proceedings" means the proceedings in the winding up of a company under the Acts.

"Official Receiver" includes any officer appointed by the Board of Trade to discharge the duties of Official Receiver under the Acts.

"Registrar," as applied to a County Court, includes, where there are joint registrars, either of such registrars, or a deputy

(*a*) Printed *infra*, as Rules 127, 127a, 127b, 127c, 127d, 132a and 130a. See W. N. 1891, Orders and Rules, p. 10.

(*b*) Printed *infra*, as Rule 63 (2a). See, too, rule 45. See W. N. 1895, Orders and Rules, p. 3.

(*c*) Printed *infra*, as Rule 173a. See W. N. 1896, Miscellaneous, p. 158.

(*d*) Printed *infra*, as Rules 20a, 20b, 20c, 20d, 20e and 20f. See W. N. 1900, Part II. p. 1.

(*e*) For the application of these Rules to the Chancery Court of the County Palatine of Lancaster, see Comp. (Winding-up) Act, 1890, § 26 (5), *supra*, p. 1386.

(*f*) Repealed so far as relates to the High Court by Rules, 1892, r. 34. And see now as to Judge in High Court, ib. r. 35, and the order of 6th Dec. 1901, *infra*. As to the application of the Rules of 1892, see rule 1 thereof.

registrar, and as applied to any Court other than the High Court, means and includes the officer of the Court whose duty it is to exercise in relation to a winding up the functions which in the High Court are exercised by a registrar or chief clerk (*g*).

"Sealed" means sealed with the seal of the Court.

"Taxing officer" means the officer of the Court whose duty it is to tax costs in the proceedings of the Court under its ordinary jurisdiction (*h*).

"Liquidator" includes an Official Receiver when acting as liquidator (*i*).

(b.) In the application of these Rules to any Court other than the High Court, the registrar may, under the general or special directions of the Judge, hear and determine any application or matter which under the Acts and these Rules may be determined in chambers.

Use of forms in appendix.

3.—(1.) The forms in the Appendix, where applicable, and where they are not applicable forms of the like character, with such variations as circumstances may require, shall be used. Where such forms are applicable any costs occasioned by the use of any other or more prolix forms shall be borne by or disallowed to the party using the same, unless the Court shall otherwise direct.

(2.) Provided that the Board of Trade may from time to time alter any forms which relate to matters of an administrative and not of a judicial character, or substitute new forms in lieu thereof (*j*). Where the Board of Trade alters any form, or substitutes any new form in lieu of a form prescribed by these Rules, such altered or substituted form shall be published in the London Gazette.

Court and Chambers.

Proceedings in High Court.

4. *In the High Court* (*k*)—

(1.) *All matters and applications to the Court or a Judge in the winding up of a company as to which the procedure and practice is not altered by the Companies (Winding-up) Act,* 1890, *and these Rules, and which according to the practice of the Court or the directions of the Judge have been heard in Court or in Chambers, shall continue to be so heard* (*l*).

(2.) *Subject to the provisions of the Companies (Winding-up) Act,* 1890, *and these Rules* (*m*), *applications to the Court under the*

(*g*) See as to the High Court, Rules, 1892, r. 35.

(*h*) See R. S. C., January, 1902.

(*i*) This is not so in the rules as to accounts. See r. 168.

(*j*) See also r. 175. Several new forms have been issued by the Board of Trade under this rule; they will be found incorporated in the Appendix.

(*k*) Repealed by the Rules, 1892. See now ib., rr. 3–5 and 16.

(*l*) In the absence of any provision in these rules and of any direction by the Court, the practice under the Rules of the Supreme Court is to be followed, r. 178.

(*m*) The procedure in certain cases is fixed by these rules, viz. :—

Applications by the Official Receiver for an extension of time for summoning the first meetings of creditors or contributories by r. 45.

Applications under § 10 of Comp. (Winding-up) Act, 1890, by r. 78.

Applications by a person to have his name removed from the list of contributories by r. 86.

said Act and these Rules shall be heard in Court or in chambers according as the Judge shall by any general or special directions order. Provided that appeals (n) to the Court from the Official Receiver and Board of Trade and Liquidator shall be brought by notice of motion to the Court pursuant to the Rules of the Supreme Court with reference to motions (o).

Proceedings in Courts other than High Court.

5. In Courts other than the High Court the following matters and applications to the Court shall be heard in open Court:—

(a.) Petitions.
(b.) Public examinations (p).
(c.) Applications under section 167 of the Companies Act, 1862 (q).
(d.) Applications to rectify the Register.
(e.) Appeals from the Official Receiver (r) and Board of Trade.
(f.) Appeals from any decision or act of the liquidator.
(g.) Applications relating to the admission or rejection of proofs (s).
(h.) Proceedings under section 10 of the Companies (Winding-up) Act, 1890 (t).

Adjournment from Chambers to Court and *vice versâ*.

6. Subject to the provisions of the Acts and Rules, any matter or application in a Court other than the High Court may at any time, if the Judge thinks fit, be adjourned from chambers to Court or from Court to chambers; and if all the contending parties require any matter or application to be adjourned from chambers into Court it shall be so adjourned (u).

Proceedings (v).

Proceedings how intituled. Forms 1 and 2.

7.—(1.) Every proceeding in Court or in chambers under the Acts shall be dated, and shall be intituled "In the matter of the Companies Acts, 1862 to 1890," with the name of the Court in which it is taken, and of the company to which it relates. Numbers and dates may be denoted by figures.

Applications for leave to make a call by r. 93.
Mode of enforcing the payment of a call by r. 95.
Applications by the Board of Trade to the Court for getting in unclaimed assets in the hands of a liquidator under § 15 of the Comp. (Winding-up) Act, 1890, by r. 130a and Rules, 1892, rr. 3 and 16.
Applications by the Board of Trade to the Court to examine a liquidator or other person under § 25 of the Comp. (Winding-up) Act, 1890, by r. 171.

See, too, Rules, 1892, rr. 3–5, 16; and as to public examinations, § 26 of the Act.

(n) The time for appealing from the Official Receiver or Board of Trade is twenty-one days (see r. 170), unless it be extended under r. 176.

(o) See R. S. C., Order LII.

(p) See Comp. (Winding-up) Act, 1890, § 8, and Rules, 1892, r. 26.

(q) These are applications to the Court to direct the prosecution of delinquent directors, &c.

(r) *I.e.*, acting in that capacity, *National Whole Meal Bread* [1892], 2 Ch. 457.

(s) Rr. 96 *et seq.*

(t) Rr. 78 and 79.

(u) In the absence of any provision in these Rules and of any direction by the Court, in the County or Palatine Courts, the practice of those Courts in proceedings for the administration of assets by the Court is to be followed, r. 178.

(v) See further Rules, 1892, rr. 2 to 14; and as to file of proceedings, Rules, 1892, rr. 11, 31 to 33, and the rule of November, 1895. Formal defects do not invalidate proceedings, r. 177.

(2.) The first proceeding in every winding-up matter (*x*) shall have a distinctive number assigned to it by the proper officer (*y*), and all subsequent proceedings in the same matter shall bear the same number (*z*).

Transfer by Judge of High Court.
[§ 3 of Act of 1890.]
Form 3.

8. A Judge of the High Court to whom the exercise of the jurisdiction to wind up companies is assigned may at any time, for good cause shown, order the proceedings in any Court other than the High Court to be transferred to the High Court, or any proceedings in the High Court to be transferred from the High Court to any other Court. Where the transfer is to the High Court, the winding up shall be assigned to the Judge who made the order of transfer (*a*).

Transfer by Judge of Court other than High Court.
Form 3.

9. The Judge of any Court having jurisdiction to order the winding up of a company other than the High Court or a Palatine Court may at any time, for good cause shown, order any proceedings which have been commenced or are pending in his Court to be transferred to any Court which has jurisdiction to order the winding up of a company not being the High Court or a Palatine Court.

Notice to Official Receiver.

10. Notice of an application for a transfer of proceedings shall be served on the Official Receiver before the hearing thereof.

Transmission of order of transfer.

11. When an order of transfer has been made the person on whose application the order is made shall, if the transfer is to the High Court, lodge with the chief clerk (*b*) of the Judge to whom the winding up becomes assigned, and if the transfer is to any other Court with the registrar of that Court, a sealed copy of the order of transfer.

Transfer of Official Receiver's duties.

12. Where the proceedings in any winding up are transferred by any Court, the Official Receiver of the Court to which such proceedings are transferred shall become the Official Receiver in the winding up in place of the Official Receiver of the Court from which the proceedings are transferred.

Transmission of records.

13. Where any proceedings are transferred from a Court to any other Court, the records of proceedings shall, if the transfer is to the High Court, be transmitted to the chief clerk (*b*) of the Judge to whom the winding up becomes assigned, and if the transfer is to any other Court to the Registrar of that Court.

Notice of transfer to Official Receiver and Board of Trade.
Form 4.

14. As soon as the chief clerk (*b*) of the Judge (if the transfer is to a Judge of the High Court) or the registrar of the Court (if the transfer is to any other Court) has received the records of proceedings from the Court from which the transfer is made he shall give notice of the transfer to the Official Receiver of the Court to which the proceedings are transferred, who shall give notice of the transfer to the Board of Trade. When a winding up is transferred from one Court to another, it shall receive a new distinctive number.

Transfer of jurisdiction of County Court and pending business.

15. Whenever the Lord Chancellor, by order under his hand (*c*), shall exclude any County Court from having jurisdiction under the Acts, or shall attach the district or any part of the district of a County Court to the High Court, or any other County Court, or shall detach the district

(*x*) See the definition in Rules of August, 1892, r. 3.

(*y*) See Rules, 1892, r. 6 (2).

(*z*) Not if there is a transfer, Rules, 1890, rr. 14 and 15.

(*a*) See further as to transfers, Rules, 1892, r. 14, and Rules, August, 1892.

(*b*) Now the registrar, see Rules, 1892, r. 35.

(*c*) See the County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, 1899, *infra*.

or any part of the district of any County Court from the district and jurisdiction of the High Court, any winding-up business pending in the Court or district to which the order relates shall become transferred to such Court as shall be mentioned for the purpose in the order; and, thereupon, the Rules as to transfer of proceedings shall apply to the transfer of such pending proceedings in all respects as if the proceedings had been transferred by order of a Court having power to transfer proceedings.

Witnesses and Depositions (d).

Shorthand notes, &c. Forms 5, 6, 7 (e).

16. If the Court or the officer of the Court before whom any examination is under the Acts and these Rules directed to be held shall in any case, and at any stage in the proceedings, be of opinion that it would be desirable that a person (other than the person before whom an examination is taken) should be appointed to take down the evidence of any person examined under the Acts and Rules in shorthand or otherwise, it shall be competent for the Court or officer aforesaid to make such appointment; provided that where the application is made by the Official Receiver he shall nominate a person for the purpose, and the person so nominated shall be appointed, unless the Court or officer holding the examination shall otherwise order (*f*). Every person so appointed shall be paid a sum not exceeding one guinea a day, and where the Court appoints a shorthand writer a sum not exceeding 8*d*. per folio of 90 words for any transcript of the evidence that may be required, and such sums shall be paid by the party at whose instance the appointment was made, or out of the assets of the Company as may be directed by the Court (*g*).

Committal of contumacious witness. Form 39.

17.—(1.) If a person examined before a registrar or other officer of the Court who has no power to commit for contempt of Court, refuses to answer to the satisfaction of the registrar or officer any question which he may allow to be put, the registrar or officer shall report such refusal to the Judge, and upon such report being made the person in default shall be in the same position and be dealt with in the same manner as if he had made default in answering before the Judge.

(2.) The report shall be in writing, but without affidavit, and shall set forth the question put, and the answer (if any) given by the person examined.

(3.) The registrar or officer shall, before the conclusion of the examination at which the default in answering is made, name the time when and the place where the default will be reported to the Judge; and upon receiving the report the Judge may take such action thereon as he shall think fit. If the Judge is sitting at the time when the default in answering is made, such default may be reported immediately.

Sittings of Courts.

Place of sitting of County Court.

18. Subject to the orders of the Lord Chancellor, the place of sitting of each County Court having jurisdiction under the Acts (*h*) shall, for the

(*d*) As to depositions of examinations under the Comp. Act, 1862, § 115, see Rule, Nov. 1895; and of a public examination, Rules, 1892, r. 27.

(*e*) Where a shorthand writer is not employed, see Form 8.

(*f*) The notes of a public examination must be signed and filed Comp. (Winding-up) Act, 1890, § 8 (7) and r. 77.

(*g*) See Rule 31.

(*h*) See the County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, 1899, *infra*.

purpose of such jurisdiction, be the town in which the Court holds its sittings for the general business of the Court, under the provisions of the County Courts Act, 1888.

Times for holding Courts other than the High Court.

19. Subject to the provisions of the Acts, the times of the sitting of each Court other than the High Court in matters of the winding up of companies shall be those appointed for the transaction of the general business of the Court, unless the Judge of any such Court shall otherwise order.

Service and Execution of Process.

Duties of bailiff, &c.

20.—(1.) It shall be the duty of the high bailiff (*i*) of a County Court to serve such orders, summonses, petitions, and notices as the Court may require him to serve; to execute warrants and other process; to attend any sittings of the Court (but not sittings in chambers); and to do and perform all such things as may be required of him by the Court.

(2.) But this rule shall not be construed to require any order, summons, petition, or notice to be served by a bailiff or officer of the Court which is not specially by the Acts or Rules required to be so served, unless the Court in any particular proceeding by order specially so directs.

Arrests, Commitments, and Execution of Process (j).

Enforcement of orders.

[20 (a).]—(1.) Every order of a Court having jurisdiction to wind up a company made in the exercise of the powers conferred by the Acts and rules may be enforced by such Court as if it were a judgment or order of the Court made in the exercise of its ordinary jurisdiction.

(2.) Every such order of a County Court, and every process issued thereon, may be enforced, executed, and dealt with not only by such Court, but by any County Court, whether such County Court has or has not jurisdiction to wind up a company, as if such order or process were made or issued for the enforcement of a judgment or order made by such last-mentioned Court under its ordinary jurisdiction.

To whom warrants may be addressed.

[20 (b).] A warrant of arrest, or any other warrant issued under the provisions of the Acts and Rules, may be addressed to such officer of the Court, or to such high bailiff or officer of any County Court, whether such County Court has jurisdiction to wind up a company or not, as the Court may in each case direct.

Prison to which person arrested on warrant is to be taken.

[20 (c).] Where the Court issues a warrant for the arrest of a person under any of the provisions of the Acts or Rules, the prison (to be named in the warrant of arrest) to which the person shall be committed shall, unless the Court shall otherwise order, be the prison used by the Court in cases of orders of commitment made in the exercise by the Court of its ordinary jurisdiction.

Execution of warrants of arrest outside ordinary jurisdiction of Court.

[20 (d).] Where a warrant for the arrest of a person has been issued by a Court other than the High Court under any of the provisions of the Acts and Rules, the high bailiff of the Court, or other officer of the Court to whom the warrant is addressed, may send the warrant of arrest to the registrar of any other Court (other than the High Court)

(*i*) See *Barrett's Plaster Co.* [1894], 2 Q. B. 96.

(*j*) Rules 20 (a)–20 (f) are the Companies Winding-up Rules, 1899. They were dated the 28th December, 1899.

within the ordinary jurisdiction or district of which such person shall then be or be believed to be, with a warrant annexed thereto, under the hand of the high bailiff or officer and seal of the Court from which the warrant originally issued, requiring execution of the warrant by the Court to which it is so sent; and the registrar of the last-mentioned Court shall seal or stamp the warrant with the seal of his Court, and issue the same to the high bailiff or other proper officer of his Court, with an indorsement thereon in the Form 41B in the Appendix; and thereupon such last-mentioned high bailiff or officer may and shall in all respects execute the said warrant according to the requirements thereof, and all constables and peace officers shall aid and assist within their respective districts in the execution of such warrant.

To what prison a person arrested is to be conveyed.

[20 (e).]—(1.) Where a person is arrested under a warrant of commitment issued under any of the provisions of the Acts and Rules other than sections 115 and 118 of the Companies Act, 1862, and Rule 76 of the Rules, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended, and kept therein for the time mentioned in the warrant of commitment, unless sooner discharged by the order of the Court which originally issued the warrant of commitment, or otherwise by law.

Production and custody of persons arrested under Companies Act, 1862, sections 115 and 118, and Rule 76.

(2.) Where a person is arrested under a warrant, issued under section 115 or section 118 of the Companies Act, 1862, or under Rule 76 of the Rules, he shall be forthwith conveyed in custody of the bailiff or officer apprehending him to the prison of the Court within the ordinary jurisdiction of which he is apprehended; and the governor or keeper of such prison shall produce such person before the Court as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law. Provided that where any such person is conveyed to a prison other than the prison used by the Court which originally issued the warrant, in cases of orders of commitment made by such Court in the exercise of its ordinary jurisdiction, the Court may by order direct such person to be transferred to such last-mentioned prison; and on receipt of such order the governor or keeper of the prison to which such person has been conveyed shall cause such person to be conveyed in proper custody to the prison mentioned in such order, and the governor or keeper of such last-mentioned prison shall, on production of such order and of the warrant of arrest, receive such person, and shall produce him before the Court, as it may from time to time direct, and shall safely keep him until such time as the Court shall otherwise order, or such person shall be otherwise discharged by law.

Interpretation.

[20 (f).]—(1.) In these rules(*k*) the expression "the Rules" means the Companies (Winding-up) Rules, 1890, and all rules subsequently made under the provisions of the Acts, and the expression "the Acts" means the Companies Acts, 1862 to 1893.

Citation and commencement.

(2.) These rules (*k*) shall come into operation on the 1st day of January, 1900. They may be cited as the Companies (Winding-up) Rules, 1899, and shall be construed with and deemed to form part of the Companies (Winding-up) Rules, 1890; and each of these rules may be cited with reference to those rules by the number in square brackets set against the rule at the commencement thereof. The forms annexed to these rules (*k*)

(*k*) That is Rules 20 (a) to 20 (f).

APPENDIX VII.

Rules 20(f)—26.

shall be deemed to form part of the forms annexed to the Companies (Winding-up) Rules, 1890, and each of the forms annexed to these rules may be cited with reference to the forms annexed to the Companies (Winding-up) Rules, 1890, by the number placed at the head of the form (*l*).

Service.

* *Sic.*

21.—*(1.) All notices and other documents for the service of which no special mode is directed may be sent by prepaid post letter to the last known address of the person to be served therewith; and the notice or document shall be considered as served at the time that the same ought to be delivered in the due course of post by the post-office, and notwithstanding the same may be returned by the post-office (*m*).

Taxation of Costs (*n*).

Taxation of costs payable by or to Official Receiver or liquidator or by company.

22. The provisions of the following rules numbered 23 to 30 shall apply to the taxation and allowance of costs payable by or to the Official Receiver or liquidator, or which are to be paid out of the assets of the company (*o*).

Notice of appointment.

23. Every person whose bill or charges is or are to be taxed shall in all cases give not less than four days' notice of the appointment to tax the same to the Official Receiver and to the liquidator (if any).

Lodgment of bill.

24. The bill or charges, if incurred prior to the appointment of a liquidator, shall be lodged with the Official Receiver, and, if incurred after the appointment of a liquidator, shall be lodged with the liquidator, three clear days before the application for the appointment to tax the same is made. The Official Receiver or the liquidator, as the case may be, shall forthwith, on receiving notice of taxation, lodge such bill or charges with the proper taxing officer (*p*).

Copy of bill to be furnished.

25. Every person whose bill or charges is or are to be taxed shall, on application either of the Official Receiver or the liquidator, furnish a copy of his bill of charges so to be taxed, on payment at the rate of 4*d.* per folio, which payment shall be charged on the assets of the company. The Official Receiver shall call the attention of the liquidator to any items which, in his opinion, ought to be disallowed or reduced, and may attend (*q*) or be represented on the taxation.

Applications for costs.

26. Where any party to, or person affected by, any proceeding desires to make an application for an order that he be allowed his costs, or any part of them, incident to such proceeding, and such application is not made at the time of the proceeding—

(1.) Such party or person shall serve notice of his intended application on the Official Receiver, and, if a liquidator has been appointed, on the liquidator.

(2.) The Official Receiver and liquidator may appear on such application and object thereto.

(*l*) The forms will be found in the Appendix to the Rules, 1890, Nos. 41A and 41B.

(*m*) As to service on the company, see Comp. Act, 1862, §§ 62 and 63.

(*n*) See, also, R. S. C., January, 1902, and Rules, 1892, r. 28, *infra*. As to what costs are allowed in proceedings under § 10 of the Comp. (Winding-up) Act, 1890, see *Anglo-Austrian, &c., Union* [1894], 2 Ch. 622.

(*o*) As to the order of payment, see Rules, 1890, r. 31.

(*p*) See in the High Court, R. S. C. Jan. 1902, and the Rules, August, 1892, r. 2, *infra*.

(*q*) As a litigant and be heard, see *Re Nash & Sons* [1896], 1 Q. B. pp. 18, 19.

(3.) No costs of or incident to such application shall be allowed to the applicant, unless the Court is satisfied that the application could not have been made at the time of the proceeding.

Certificate of taxation. Form 10.

27. Upon the taxation of any bill of costs, charges, or expenses being completed, the taxing officer (*r*) shall issue to the person presenting such bill for taxation his certificate of taxation. The bill of costs, charges, and expenses shall be filed (*s*).

Register of bills taxed. Forms 9 and 11.

28. Every taxing officer shall keep a register of all bills taxed by him in windings up under these rules, and shall, within fourteen days after the 31st day of October in each year, make a return to the Board of Trade of all bills taxed by him during the twelve months preceding such 31st day of October.

Certificate of employment.

29. Before the bill or charges of any solicitor, manager, accountant, auctioneer, broker, or other person employed by an Official Receiver or liquidator, is or are taxed a certificate in writing, signed by the Official Receiver or liquidator, as the case may be, shall be produced to the taxing officer setting forth whether any, and if so what, special terms of remuneration have been agreed to, and in the case of the bill of costs of a solicitor, a copy of the resolution or other authority sanctioning the employment (*t*).

Review of taxation at instance of Board of Trade.

30.—(1.) Where any bill of costs, charges, fees, or disbursements of any solicitor, manager, accountant, auctioneer, broker, or other person has been taxed by a registrar of a Court other than the High Court, the Board of Trade may require the taxation to be reviewed by a taxing master of the Chancery Division of the High Court (*u*).

(2.) In any case in which the Board of Trade require such a review of taxation as is above mentioned they shall give notice to the person whose bill has been taxed, and shall apply to the taxing master of the Chancery Division of the High Court to appoint a time for the review of such taxation, and thereupon such taxing master shall appoint a time for the review of, and shall review, such taxation, and certify the result thereof. The Board of Trade shall give to the person whose bill of costs is to be reviewed notice of the time appointed for the review.

(3.) Where any such review of taxation as is above mentioned is required to be made by a taxing master of the Chancery Division of the High Court, the registrar whose taxation is to be reviewed shall forward to the said taxing master the bill which is required to be reviewed.

(4.) The Board of Trade may appear upon the review of the taxation; and if, upon the review of the taxation, the bill is allowed at a lower sum than the sum allowed on the original taxation, the amount disallowed shall (if the bill has been paid) be repaid to the Official Receiver, or the liquidator, or other person entitled thereto. The certificate of the taxing master shall in every case of a review by him under this rule be a sufficient authority to entitle the person to whom the amount disallowed ought to be repaid to demand such amount from the person liable to repay the same.

(*r*) See note (*p*), *ante*, p. 1454.

(*s*) As to file of proceedings, see Rules, 1892, rr. 11, 31-33.

(*t*) See, also, Rules, 1892, r. 28. See under the corresponding rule in bankruptcy, *Re Duncan* [1892], 1 Q. B. 331 and 879, where there was no committee of inspection; *Re Varasour* [1900], 2 Q. B. 309, as to the nature of authority required.

(*u*) See R. S. C., January, 1902.

(5.) There shall be allowed to the person whose bill is reviewed such costs of and incidental to his appearance on the review as the taxing master of the High Court shall think proper, and such costs shall be paid to such person out of the assets of the company: Provided that the costs of the attendance of a principal shall not be allowed if, in the opinion of the taxing master, he could have been sufficiently represented by his London agent.

Costs payable out of the assets of the company (*v*).

Costs payable out of the assets.

31. The assets of a company which is being wound up, remaining after payment of the fees, and actual expenses incurred in realising or getting in the assets, shall, subject to any order of the Court, and, if the winding up is in the Stannaries Court (*w*), subject to the provisions of the Stannaries Act, 1887 (*x*), be liable to the following payments (*y*), which shall be made in the following order of priority, namely:—

First. The taxed costs of the petition, including the taxed costs of any person appearing on the petition whose costs are allowed by the Court (*z*):

Next. The remuneration of the special manager (if any) (*a*):

,, The costs and expenses of any person who makes, or concurs in making, the company's statement of affairs (*b*):

,, The taxed charges of any shorthand writer appointed to take an examination: Provided that where the shorthand writer is

(*v*) See *ante*, pp. 1166 *et seq.* In addition to the costs specially mentioned in this rule and in the rules referred to in the notes thereto, the rules expressly provide that the following costs shall be payable out of the assets of the company:—

Costs of appearance on the review of a taxation of costs at the instance of the Board of Trade, r. 30 (5).

Costs of summoning meetings of creditors (or contributories?) at the instance of any person other than the Official Receiver or liquidator, if the creditors or contributories by resolution so direct, r. 51.

Expense of gazetting the liquidator's appointment, r. 63 (5).

Costs of printing and posting copies of the liquidator's summary of accounts, r. 139 (2).

The rules expressly forbid the following costs to be paid out of the company's assets:—

The costs of furnishing the security required from the liquidator or special manager, r. 67 (5).

The costs incurred by the liquidator or a member of the committee of inspection in obtaining the sanction of the Court to relieve them from the restrictions imposed upon them by rr. 157 and 158, r. 159.

As to the lien of the Official Receiver for his fees, costs and charges, and monies due to him for advances properly made in respect of the company with interest on such advances, see r. 161.

(*w*) Now the County Court at Truro. See Stannaries Court (Abolition) Act, 1896, and the Lord Chancellor's order thereunder, and the County Courts Bankruptcy and Companies Winding-up Jurisdiction Order, June, 1899.

(*x*) See 50 & 51 Vict. c. 43, §§ 9, 10, and 14.

(*y*) The costs must be taxed or allowed by the taxing officer. See Rules, 1892, r. 28.

(*z*) See *ante*, pp. 889 *et seq.*

(*a*) See r. 42.

(*b*) See r. 62.

appointed at the instance of the Official Receiver the cost of the shorthand notes shall be deemed to be an expense incurred by the Official Receiver in getting in and realising the assets of the company (c):

Next. The liquidator's necessary disbursements, other than actual expenses of realisation heretofore provided for:

,, The costs of any person properly employed by the liquidator with the sanction of the committee of inspection (d):

,, The remuneration of the liquidator (e):

,, The actual out-of-pocket expenses necessarily incurred by the committee of inspection, subject to the approval of the Board of Trade.

Official Receiver as Provisional Liquidator.

Appointment of provisional liquidator.

32.—(1.) After the presentation of a petition, upon the application of a creditor, or of a contributory, or of the company, and upon proof by affidavit of sufficient grounds for the appointment of the Official Receiver as provisional liquidator, the Court may, if it thinks fit, and upon such terms as may be just, make such appointment (f).

Form 21

(2) An order appointing the Official Receiver to be provisional liquidator prior to the making of a winding-up order, shall bear the number of the petition in respect of which it is made, and shall state the nature and short description of the property of which the Official Receiver is ordered to take possession.

Petition (g).

Form of petition.

Forms 12 and 13 (h).

33. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be in the Forms Nos. 12 and 13 in the Appendix, with such variations as circumstances may require (i).

Advertisement of petition (k).

34. Every petition shall be advertised seven clear days before the hearing, as follows:—

Form 16.

(1.) In the case of a company whose registered office, or if there shall be no such office, then whose principal or last known principal place of business is or was situate within ten miles of the principal entrance of the Royal Courts of Justice, once in the London Gazette, and once at least in one London daily morning newspaper, or in such other newspaper as the Court directs.

(2.) In the case of any other company, once in the London Gazette, and once at least in one local newspaper circulating in the district where such registered office, or principal or last known

(c) See r. 16.

(d) See Comp. (Winding-up) Act, 1890, § 12 (4) and r. 142.

(e) See r. 154 and *ante*, p. 971.

(f) See Comp. (Winding-up) Act, 1890, § 4 (5), Rules, 1890, r. 39, and Rules, 1892, r. 22, and *ante*, pp. 965 *et seq.*

(g) See, too, Rules, 1892, rr. 15 and 18 *et seq.*, and March, 1893, *infra*, p. 1558.

(h) For the form of the register of petitions, see Form 89.

(i) No form of petition was given by the Rules of 1862. The form given in the Appendix does not expressly require that a petition presented by a contributory should state that the provisions of § 40 of the Companies Act, 1867, have been complied with. See as to this, *ante*, p. 845.

(k) See, too, Rules, 1892, rr. 18 and 19, and *ante*, p. 884.

place of business, as the case may be, of such company is or was situate.

The advertisement shall state the day on which the petition was presented, and the name and address of the petitioner, and of his solicitor and London agent (if any).

Service of petition.
Forms 14 and 15.

35. Every petition shall, unless presented by the company, be served at the registered office, if any, of the company, and if there is no registered office, then at the principal or last known principal place of business of the company, if any such can be found, upon any member, officer, or servant of the company there, or in case no such member, officer, or servant can be found there, then by being left at such registered office or principal place of business, or by being served on such member or members of the company as the Court may direct; and every petition for the winding up of a company, subject to the supervision of the Court, shall also be served upon the liquidator (if any) appointed for the purpose of winding up the affairs of the company (*l*).

Verification of petition.
Form 17.

36. Every petition for the winding up of any company by the Court, or subject to the supervision of the Court, shall be verified by an affidavit referring thereto. Such affidavit shall be made by the petitioner, or by one of the petitioners, if more than one, or, in case the petition is presented by a company, by some director, secretary, or other principal officer thereof, and shall be sworn after and filed within four days after the petition is presented, and such affidavit shall be sufficient *primâ facie* evidence of the statements in the petition (*m*).

Copy of petition to be furnished to creditor or contributory.

37. Every contributory or creditor of the company shall be entitled to be furnished, by the solicitor of the petitioner, with a copy of the petition, within twenty-four hours after requiring the same, on paying the rate of 4*d.* per folio of 72 words for such copy (*n*).

Order to Wind up a Company (*o*).

Form and contents.
Forms 18 and 19 (*p*).

38. An order to wind up a company shall contain at the foot thereof a notice stating that it will be the duty of the person who is at the time secretary or chief officer of the company, and of such of the persons who are liable to make out or concur in making out the company's statement of affairs (*q*) as the Official Receiver may require, to attend on the Official Receiver forthwith on the service thereof at the place mentioned therein.

Transmission of copy to Official Receiver.

39. Three copies of every order to wind up a company, and order for the appointment of the Official Receiver as provisional liquidator of a company sealed with the seal of the Court, shall forthwith be sent by post or otherwise by the registrar to the Official Receiver.

Service of order.

40. The Official Receiver shall cause a copy of the order to wind up the company sealed with the seal of the Court to be served (*r*) upon the secretary or other chief officer of the company at the registered office of the company, or upon such other person or persons, or in such other manner as the Court may direct.

(*l*) See as to service of petition, *ante*, pp. 885, 886.

(*m*) See *ante*, pp. 887, 888. As to affidavits in opposition, see Rules, March, 1893, *infra*, p. 1558.

(*n*) As to creditors or contributories who intend to appear, see Rules, 1892, rr. 20 and 21.

(*o*) See also Rules, 1892, rr. 22–24.

(*p*) For the form of the register of winding-up orders, see Form 88.

(*q*) See Comp. (Winding-up) Act, 1890, § 7, and rr. 58–62, and *ante*, pp. 957, 958.

(*r*) See r. 21.

41.—(1.) When an order to wind up a company is made the Official Receiver shall forthwith give notice thereof to the Board of Trade, who shall forthwith cause such notice to be gazetted (*s*). Notice of order.

(2.) The Official Receiver shall forthwith send notice thereof to such local paper as the Board of Trade may from time to time direct, or, in default of such direction, as he may select. Form 20.

Special Manager.

42.—(1.) An application by the Official Receiver for the appointment of a special manager shall be supported by a report of the Official Receiver, which shall be placed on the file of proceedings (*t*), and in which shall be stated the amount of remuneration which, in the opinion of the Official Receiver, ought to be allowed to the special manager. No affidavit by the Official Receiver in support of such an application shall be required. Appointment of special manager. [§ 5 of Act of 1890.]

(2.) The remuneration of the special manager shall, unless the Judge otherwise in any special case directs, be stated in the order appointing him.

(3.) A copy of the order appointing a special manager shall be transmitted to the Board of Trade by the Official Receiver.

First Meetings of Creditors and Contributories (*u*).

43. The Official Receiver shall give to each of the directors and other officers of the company who in his opinion ought to attend the first meetings of creditors and contributories seven days' notice of the time and place appointed for each meeting. The notice may be either delivered personally or sent by prepaid post letter, as may be convenient. It shall be the duty of every director or officer who receives notice of such meeting to attend if so required by the Official Receiver. Notice of first meeting to officers of company. [§ 6 of Act of 1890.] Form (*x*).

44. The Official Receiver shall fix the days for the first meetings of creditors and contributories, and shall forthwith give notice thereof to the Board of Trade, who shall gazette the same (*y*). Notice of first meeting to Board of Trade.

45. *Where practicable, and unless the Court specially directs to the contrary, the first meetings of creditors and contributories shall not be held until after the statement of affairs prescribed by section 7 of the Companies (Winding-up) Act,* 1890, *has been submitted to the Official Receiver. If an extension of time for summoning the meetings or either of them is required, an application for extension of time may be made by the Official Receiver ex parte on a report without any affidavit* (*z*). Times for holding first meeting.

46. Notice of the first meeting of contributories shall be sent to every person who appears from the company's books or otherwise to be a contributory of the company. Notice to contributories. Forms 22 and 23.

General Meetings of Creditors and Contributories.

47. Subject to the provisions of the Companies (Winding-up) Act, 1890, and to the control of the Court, the liquidator may from time to time, Meetings for ascertaining wishes of creditors and contributories. Form 31. [§ 13 of Act of 1890.]

(*s*) See Form 86 (1).

(*t*) See Rules, 1892, rr. 11, 31-33.

(*u*) See as to these meetings, *ante*, pp. 956, 961, 962, and 968; and for other rules applicable, see First Schedule to the Act, *ante*, pp. 1388 *et seq.*; and as to time for lodging proxies, Rules, 1892, r. 30; and as to the passing of resolutions, ib. r. 25.

(*x*) The reference should be to Form 24.

(*y*) See Form 86 (2).

(*z*) This Rule was annulled by the Companies Winding-up Rules, 1895, which came into operation on the 23rd April, 1895, and apply to every winding up of a company under an order of the Court made on or after that day.

when he thinks expedient, summon, hold, and conduct meetings of the creditors or contributories for the purpose of ascertaining their wishes in all matters relating to the winding up (*a*).

Meetings subsequent to the first meetings.
Form 30 (*b*).

48. Meetings subsequent to the first meetings of creditors and contributories shall be summoned by sending notices to them. The notice to each creditor shall be sent to the address given in his proof, or if he has not proved, to the address given in the statement of affairs of the company, or to such other address as may be known to the person summoning the meeting. The notice to each contributory shall be sent to the address mentioned in the company's books as the address of such contributory, or to such other address as may be known to the person summoning the meeting.

Notices of general meetings.
Form 26.

49. The notices of general meetings to be issued to creditors and contributories by the Official Receiver or liquidator shall, where no special time is prescribed, be sent off not less than seven days before the day appointed for the meeting.

Proof of notice.
Forms 27 and 28.

50. A certificate by the Official Receiver or other officer of the Court, or by the clerk of any such person, or an affidavit by the liquidator, or his solicitor or the clerk of either of such persons, that the notice of any meeting has been duly posted, shall be sufficient evidence of such notice having been duly sent to the person to whom the same was addressed.

Costs of calling meeting.

51. The costs of summoning a meeting of creditors (*c*) at the instance of any person other than the Official Receiver or liquidator shall be paid by the person at whose instance it is summoned, who shall before the meeting is summoned deposit with the Official Receiver or liquidator (as the case may be) such sum as may be required by the Official Receiver or liquidator as security for the payment of such costs. The said costs shall be repaid out of the assets of the company, if the creditors or contributories, as the case may be, shall by resolution so direct.

Chairman of general meetings.
Form 25.

52. Where a meeting is summoned by the Official Receiver he or someone nominated by him shall be chairman of the meeting. At every other meeting of creditors and contributories (other than meetings to which the schedule of the Companies (Winding-up) Act, 1890, applies (*d*)), the chairman (*e*) shall be such person as the meeting by resolution shall appoint.

Votes at meetings.

53. *The provisions of section* 91 *of the Companies Act*, 1862, *relating to votes of creditors and contributories at meetings summoned under that section shall apply to the voting of creditors and contributories at meetings held under the Companies (Winding-up) Act*, 1890, *and these rules* (*f*).

Copy of resolution for chief clerk or registrar.
Form 32.

54. The Official Receiver, or, as the case may be, the liquidator, shall send in the High Court to the chief clerk (*g*) of the Judge to whom the winding up of the company is assigned, and in any other Court to the registrar, a copy, certified by him, of every resolution of a meeting of creditors or contributories (*h*).

(*a*) See also Comp. (Winding-up) Act, § 23; and as to the passing of resolutions, Rules, 1892, r. 25.

(*b*) The reference should be to Form 26.

(*c*) The words "or contributories" appear to have been accidentally omitted. See the concluding words of the rule.

(*d*) See First Schedule (5).

(*e*) As to the powers of a chairman, see *ante*, pp. 427, 428.

(*f*) This rule has been repealed and replaced by Rules, 1892, r. 25.

(*g*) Now the registrar, see Rules, 1892, r. 35.

(*h*) The resolutions must also be entered in the Record Book, r. 143.

55. Where a meeting of creditors or contributories is summoned by notice, the proceedings and resolutions at the meeting shall, unless the Court otherwise orders, be valid, notwithstanding that some creditors or contributories may not have received the notice sent to them.

Non-reception of notice by a creditor.

56. Where a meeting of creditors is adjourned, the adjourned meeting shall be held at the same place as the original place of meeting, unless in the resolution for adjournment another place is specified, or unless the Court otherwise orders.

Adjournment.
Form 29.

57. In calculating a quorum at a creditors' meeting, those persons only who are entitled to vote shall be reckoned.

Quorum.

Statement of Affairs (i).

58.—(1.) Every person who under section 7 of the Companies (Winding-up) Act, 1890, has been required by the Official Receiver to submit and verify a statement as to the affairs of the company, shall be furnished by the Official Receiver with forms and instructions for the preparation of the statement (*k*). The statement shall be made out in duplicate, one copy of which shall be verified by affidavit. The Official Receiver shall place upon the file of proceedings (*l*) in the winding up the verified statement of affairs.

Preparation of statement of affairs.
[§ 7 of Act of 1890.]
Form 33

(2.) The Official Receiver may from time to time hold personal interviews with such person or persons, for the purpose of investigating the company's affairs; and it shall be the duty of every such person to attend on the Official Receiver at such time and place as the Official Receiver may appoint, and give the Official Receiver all information that he may require.

59. Where any person requires any extension of time for submitting the statement of affairs, he shall apply to the Official Receiver, who may, if he thinks fit, give a written certificate extending the time, which certificate shall be filed with the proceedings (*l*) in the winding up, and shall render an application to the Court unnecessary.

Extension of time for submitting statement of affairs.

60. After the statement of affairs of a company has been submitted to the Official Receiver it shall be the duty of each person who has made it, if and when required, to attend on the Official Receiver and answer all such questions as may be put to him, and give all such further information as may be required of him by the Official Receiver in relation to the statement of affairs.

Information subsequent to statement of affairs.

61. Any default in complying with the requirements of section 7 of the Companies (Winding-up) Act, 1890, may be reported by the Official Receiver to the Court (*m*).

Default.

62. A person who is required to make or concur in making any statement of affairs of a company shall before incurring any costs or expenses in and about the preparation and making of the statement apply to the Official Receiver for his sanction, and submit a statement of the estimated costs and expenses which it is intended to incur; and no person shall be allowed out of the assets of the company any costs or expenses which have not before being incurred been sanctioned by the Official Receiver.

Expenses of statement of affairs.

(*i*) See Comp. Winding-up Act, 1890, § 7, and *ante*, pp. 957, 958.

(*k*) See also rr. 38 and 40.

(*l*) See Rules, 1892, rr. 11, 31–33.

(*m*) Any person in default is liable to a fine not exceeding 10*l.* for every day during which the default continues, see Comp. (Winding-up) Act, 1890, § 7 (5).

Rules 63—67.

Appointment of Liquidator (n).

Appointment of liquidator on report of meetings of creditors and contributories.

63.—(1.) As soon as possible after the first meetings of creditors and contributories have been held the Official Receiver, or the chairman of the meeting, as the case may be, shall report the result of each meeting to the Court.

Form 32.

Form 34.

(2a.) Upon the result of the meetings of creditors and contributories being reported to the Court, the Court may, if the meeting of creditors and the meeting of contributories have each passed the same resolutions, or if the resolutions passed at the two meetings are identical in effect, upon the application of the Official Receiver, forthwith make the appointments necessary for giving effect to such resolutions. In any other case the Court shall, on the application by the Official Receiver, fix a day for considering the resolutions and determinations of the meetings, deciding differences (if any), and making such appointments and orders as shall be necessary (*o*).

(3.) When a time and place have been fixed for the consideration of the determinations of the meetings such time and place shall be advertised by the Official Receiver in such manner as the Court shall direct, but so that the first or only advertisement shall be published not less than seven days before the day so fixed.

(4.) Upon the consideration of the determinations of the meetings the Court shall hear the Official Receiver and any creditor or contributory.

Form 34.

(5.) If a liquidator is appointed a copy of the order appointing him shall be transmitted to the Board of Trade by the Official Receiver, and the Board of Trade shall, as soon as the liquidator has given security, cause notice of the appointment to be gazetted (*p*). The expense of gazetting notice of the appointment shall be paid by the liquidator, but may be charged by him on the assets of the company.

Advertisement of appointment.

Form 36.

64. Every appointment of a liquidator or committee of inspection shall be advertised by the liquidator in such manner as the Court directs immediately after the appointment has been made and the liquidator has given the required security.

Death, &c., of liquidator.

65. In case of the death, removal, or resignation of a liquidator another may be appointed in his place in the same manner as directed in the case of a first appointment, and the Official Receiver shall on the request of not less than one-tenth in value of the creditors or contributories summon meetings for the purpose of determining whether or not the vacancy shall be filled.

Style of Official Receiver when he is liquidator.

66. When the Official Receiver is liquidator of a company, he shall be styled "Official Receiver and liquidator" (*q*).

Security by liquidator or special manager.

Standing security to Board of Trade.

Form 35.

67. In the case of a special manager or a liquidator other than the Official Receiver the following rules as to security shall be observed, namely:—

(*n*) See *ante*, p. 968.

(*o*) This rule was substituted for the former rule by the Rules of 1895, which came into operation on the 23rd April, 1895, and apply to every winding up of a company under an order of the Court made on or after that date. For the construction of the former rule, see *Johannesburg Land, &c., Co.* [1892], 1 Ch. 583.

(*p*) See Form 86 (6).

(*q*) See Comp. (Winding-up) Act, 1890, § 4.

(1.) The security shall be given to such officers or persons and in such manner as the Board of Trade may from time to time direct.

(2.) It shall not be necessary that security shall be given in each separate winding up; but security may be given either specially in a particular winding up or generally to be available for any winding up in which the person giving security may be appointed either as liquidator or special manager.

(3.) The Board of Trade shall fix the amount (*r*) and nature of such security, and may from time to time, as they think fit, either increase or diminish the amount of special or general security which any person has given.

(4.) The certificate of the Board of Trade that a liquidator or special manager has given security to their satisfaction shall be placed on the file of proceedings (*s*).

(5.) The cost of furnishing the required security by a liquidator or special manager shall be borne by him personally, and shall not be charged against the assets of the company as an expense incurred in the winding up.

Failure to give or keep up security.

68.—(1.) If a liquidator or special manager fails to give the required security within the time stated for that purpose in the order appointing him or any extension thereof, the Official Receiver shall report such failure to the Court, who shall thereupon rescind the order appointing the liquidator or special manager.

(2.) If a liquidator or special manager fails to keep up his security, the Official Receiver shall report such failure to the Court, who may thereupon remove the liquidator or special manager and make such order as to costs as the Court shall think fit.

Public Examination (*t*).

Report of Official Receiver to be filed.

69. A report made by the Official Receiver pursuant to section 8 of the Companies (Winding-up) Act, 1890, shall state in a narrative form the facts and matters which the Official Receiver desires to bring to the notice of the Court, and his opinion as required by section 8 of the Companies (Winding-up) Act, 1890.

[§ 8 of Act of 1890.]

Appointment of time for consideration of report.

70. The Official Receiver may apply to the Court to fix a day for the consideration of the report, and on such application the Court shall appoint a day on which the report shall be considered.

Consideration of report.

71. The consideration of the report shall be before the Judge of the Court personally in chambers, and the Official Receiver shall personally, or by counsel or solicitor, attend the consideration of the report, and give the Court any further information or explanation with reference to the matters stated in the report which the Court may require (*u*).

Order for public examination.

Form 37.

72. *If the Court makes an order pursuant to sub-section nine of section eight of the Companies (Winding-up) Act,* 1890, *directing any person to*

(*r*) Either before or after the winding-up order, *Mercantile Bank of Australia* [1892], 2 Ch. 402.

(*s*) Rules, 1892, rr. 11, 31–33.

(*t*) See *ante*, pp. 928 *et seq.*

(*u*) For the means by which the Official Receiver can obtain further information, see rr. 60–62, and Comp. Act, 1862, § 115.

APPENDIX VII.
Rules 72—77.

attend for public examination, the examination shall be held in open Court—

(a.) *If the winding up of the company is in the High Court, before such one of the officers of the Court mentioned in section 8 of the Companies (Winding-up) Act, 1890, as the Court may direct, and in the absence of any such direction, before a registrar in bankruptcy of the High Court.*

(b.) *If the winding up of the company is in a County Court, before the Judge of the Court, or before a registrar of the Court if such registrar is also a district registrar of the High Court named by the Lord Chancellor for the purpose of holding public examinations under the Acts, or before any such district registrar.*

(c.) *If the winding up of the company is in the Stannaries Court, before the vice-warden (x).*

Application for day for holding examination.

73. Upon an order directing a person to attend for public examination being made, the Official Receiver shall apply for the appointment of a day on which the public examination is to be held.

Appointment of time and place for public examination.

Form 38.

74. A day and place shall be appointed for holding the public examination, and notice of the day and place so appointed shall be given by the Official Receiver to the person who is to be examined by sending such notice in a registered letter addressed to his usual or last known address.

Notice of public examination to creditors and contributories.

75. The Official Receiver shall give notice of the order appointing the time and place for holding a public examination to the creditors and contributories by advertising the order in such newspapers as the Board of Trade from time to time direct, or in default of any such direction as the Official Receiver thinks fit, and shall also forward notice of the order to the Board of Trade to be gazetted (y).

Default in attending.

Form 41.

76. If any person who has been directed by the Court to attend for public examination fails to attend (z) at the time and place appointed by the order for holding or proceeding with the same, and no good cause is shown by him for such failure, or if before the day appointed for the examination the Official Receiver satisfies the Court that such person has absconded or that there is reason for believing that he is about to abscond with the view of avoiding examination, it shall be lawful for the Court, upon its being proved to the satisfaction of the Court that the order for attendance at the public examination was duly served, without any further notice to issue a warrant for the arrest of the person required to attend, or to make such other order as the Court shall think just (a).

Notes of examination to be filed.

Form 40.

77. The notes of every public examination held pursuant to the Companies (Winding-up) Act, 1890, shall, after being signed as required by the said Act (b), be filed with the proceedings (c).

(x) Repealed by Rules, 1892, and replaced by Rules, 1892, r. 26.

(y) See Form 86 (3).

(z) For the course to be pursued if the person examined refuses to answer questions, see Rules, 1890, r. 17.

(a) Compare § 118 of the Companies Act, 1862. See, too, Rules 20 (a) *et seq.*, and Rules, 1892, r. 13.

(b) See Comp. (Winding-up) Act, 1890, § 8 (7). As to the employment of a shorthand writer, see r. 16.

(c) See Rules, 1892, rr. 11, 31–33; and as to the use of depositions in evidence, see ib. r. 27.

Proceedings against Delinquent Directors, Promoters, and Officers.

Rules 78—83.

Application against delinquent directors, officers, and promoters.

78. An application under section 10 of the Companies (Winding-up) Act, 1890 (*d*), shall in any Court other than the High Court be made by motion to the Court. In the High Court the application shall be made in accordance with the practice heretofore observed with reference to applications under section 165 of the Companies Act, 1862 (*e*). Where the application is made by the Official Receiver or liquidator he may make a report to the Court stating any facts and information on which he proceeds which are verified by affidavit, or derived from sworn evidence in the matter. Where the application is made by any other person it shall be supported by affidavit.

[§ 10 of Act of 1890.]

Form 42.

Notice of application.

79. Where the application is made by motion, notice of the intended motion shall be served on every person against whom an order is sought, not less than eight days before the day named in the notice for hearing the motion. A copy of every report and affidavit intended to be used in support of the motion shall be served on every person to whom notice on motion is given not less than four days before the hearing of the motion (*f*).

Payments into and out of a Bank (ff).

Payments out of Bank of England.

80. All payments out of the Companies Liquidation Account shall be made in such manner as the Board of Trade may from time to time direct.

[§ 11 of Act of 1890.]

Special bank account.

81. Where the liquidator is authorised to have a special bank account he shall forthwith pay all monies received by him into that account to the credit of the liquidator of the company. All payments out shall be made by cheque payable to order, and every cheque shall have marked or written on the face of it the name of the company, and shall be signed by the liquidator, and shall be countersigned by at least one member of the committee of inspection, and by such other person, if any, as the committee of inspection may appoint.

Application by committee of inspection and authority for special bank account.

82. Where application is made to the Board of Trade to authorise the liquidator to make his payments into and out of a special bank account the Board of Trade may grant such authorisation for such time and on such terms as they may think fit, and may at any time order the account to be closed if they are of opinion that the account is no longer required for the purposes mentioned in the application.

Forms 43 and 44.

List of Contributories (g).

Liquidator to settle list of contributories.

83. The liquidator (*h*) shall with all convenient speed after his appointment settle a list of the contributories of the company, and shall appoint a day for that purpose. The list of contributories shall contain a statement of the address of, and the number of shares or extent of interest to be attributed to each contributory, and shall distinguish the several classes of contributories. As regards representative contributories the

[§ 13 of Act of 1890; §§ 98 and 99 of Act of 1862.]

Form 45.

(*d*) See on this section, *ante*, pp. 940 *et seq.* As to the use of depositions of a public examination in these proceedings, see Rules, 1892, r. 27.

(*e*) That is by summons. See *ante*, p. 945.

(*f*) See, too, Rules, 1892, r. 27.

(*ff*) Comp. (Winding-up) Act, 1890. § 11, and regulations of the Board of Trade, *infra*, p. 1592.

(*g*) See *ante*, pp. 1034 *et seq.*

(*h*) This includes the Official Receiver when acting as provisional liquidator, *English Bank of River Plate* [1892], 1 Ch. 391.

Rules 83—90

liquidator shall observe the requirements of section 99 of the Companies Act, 1862.

Appointment of time and place for settlement of list.

Form 46.

84. The liquidator shall give notice in writing of the time and place appointed for the settlement of the list of contributories to every person whom he proposes to include in the list, and shall state in the notice to each person in what character and for what number of shares or interest he proposes to include such person in the list.

Settlement of list of contributories.

Form 47.

85. On the day appointed for settlement of the list of contributories, the liquidator shall hear any person who objects to being settled as a contributory, and after such hearing shall finally settle the list, which when so settled shall be the list of contributories of the company.

Notice to contributories.

Forms 48, 50, and 51.

86. The liquidator shall forthwith give notice to every person whom he has finally placed on the list of contributories, stating in what character and for what number of shares or interest he has been placed on the list, and in the notice inform such person that any application (*i*) for the removal of his name from the list or for a variation of the list, must be made to the Court by summons within twenty-one days from the date of the service on the contributory or alleged contributory of notice of the fact that his name is settled in the list of contributories.

Application to the Court to vary the list.

[§§ 13 and 24 of Act of 1890.]

87. Subject to the power of the Court to extend the time (*k*) or to allow an application to be made notwithstanding the expiration of the time limited for that purpose, no application to the Court by any person who objects to the list of contributories as finally settled by the liquidator shall be entertained after the expiration of twenty-one days from the date of the service (*l*) on such person of notice of the settlement of the list.

Variation of or addition to list of contributories.

Forms 49 and 52.

88. The liquidator may from time to time vary or add to the list of contributories, but any such variation or addition shall be made in the same manner in all respects as the settlement of the original list (*m*).

Collection and Distribution of Assets.

Collection and distribution of company's assets by liquidator.

[§ 13 of Act of 1890; § 98 of Act of 1862.]

89. The duties imposed on the Court by section 98 of the Companies Act, 1862, with regard to the collection of the assets of the company and the application of the assets in discharge of the company's liabilities shall be discharged by the liquidator as an officer of the Court subject to the control of the Court.

Powers of liquidator.

[§ 13 of Act of 1890.]

90. For the purpose of the discharge by the liquidator of the duties imposed by section 98 of the Companies Act, 1862, as varied by section 13 of the Companies (Winding-up) Act, 1890, and the last preceding rule, the liquidator shall for the purpose of acquiring or retaining possession of the property of the company, be in the same position as if he were a Receiver of the property appointed by the High Court, and the Court may, on his application, enforce such acquisition or retention accordingly (*n*).

(*i*) As to the costs of a successful application, see *Salisbury-Jones and Dale's case* [1895], 1 Ch. 333.

(*k*) See Rules, 1890, r. 176.

(*l*) Ib. r. 21.

(*m*) These rules do not appear to give the liquidator the power to rectify the register. See Companies (Winding-up) Act, 1890, § 13.

(*n*) As to the duty of the Official Receiver to hand over the assets to the liquidator upon his appointment, see r. 161. As to summary proceedings against a liquidator, see *Hill's Waterfall Estate, &c., Co.* [1896], 1 Ch. 947.

Power of liquidator to require delivery of property.
[§ 13 of Act of 1890; § 100 of Act of 1862.]
Form 53.

91. The powers conferred on the Court by section 100 of the Companies Act, 1862, shall be exercised by the liquidator. Any contributory for the time being on the list of contributories, trustee, receiver, banker, or agent or officer of a company which is being wound up under order of the Court shall, on notice from the liquidator and within such time as he shall by notice in writing require, pay, deliver, convey, surrender, or transfer to or into the hands of the liquidator any sum of money or balance, books, papers, estate, or effects which happen to be in his hands for the time being and to which the company is *primâ facie* entitled (*o*).

Calls (*p*).

Calls by liquidator.
[§ 13 of Act of 1890; § 102 of Act of 1862.]
Form 54.

92. The powers and duties of the Court in relation to making calls upon contributories conferred by section 102 of the Companies Act, 1862, shall and may be exercised by the liquidator as an officer of the Court subject to the provisions of section 13 of the Companies (Winding-up) Act, 1890, and to the following regulations:—

(1.) Where the liquidator desires to make any call on the contributories, or any of them, for any purpose authorised by the Acts (*q*), if there is a committee of inspection he may summon a meeting of such committee for the purpose of obtaining their sanction to the intended call.

Form 55.

(2.) The notice of the meeting shall be sent to each member of the committee of inspection in sufficient time to reach him not less than seven days before the day appointed for holding the meeting, and shall contain a statement of the proposed amount of the call, and the purpose for which it is intended. Notice of the intended call and the intended meeting of the committee of inspection shall also be advertised once at least in a London newspaper, and where the winding up is not in the High Court also in a newspaper circulating in the district of the Court in which the winding up is being conducted. The advertisement shall state the time and place of the intended meeting of the committee of inspection, and that each contributory may either attend the said meeting and be heard, or make any communication in writing to the liquidator or members of the committee of inspection to be laid before the meeting, in reference to the said intended call.

(3.) At the meeting of the committee of inspection any statements or representations made either to the meeting personally or addressed in writing to the liquidator or members of the committee by any contributory shall be considered before the intended call is sanctioned.

Form 56.

(4.) The sanction of the committee shall be given by resolution which shall be passed by a majority of the members present (*r*).

(*o*) See *ante*, pp. 939, 940.

(*p*) See *ante*, pp. 1144 *et seq.*, and as to the position of debenture holders with a charge on uncalled capital, see *Fowler* v. *Broad's Patent Night Light Co.* [1893], 1 Ch. 724.

(*q*) These purposes are:—

1. For payment of the companies' debts and liabilities (*ante*, p. 1149).
2. Payment of costs of winding up (*ante*, p. 1168).
3. Adjustment of the rights of contributories *inter se* (*ante*, p. 1152).

See Companies Act, 1862, § 102.

(*r*) The majority of the committee must be present. See Comp. (Winding-up) Act, § 9 (3).

(5.) Where there is no committee of inspection the liquidator shall not make a call without obtaining the leave of the Court.

Application to the Court for leave to make a call.

Forms 58, 59, 60, and 61.

93. Every application to the Court for leave to make any call on the contributories, or any of them, for any purpose authorised by the Acts, shall be made by summons stating the proposed amount of such call, and such summons shall be served four clear days at the least before the day appointed for making the call on every contributory proposed to be included in such call; or if the Court so directs notice of such intended call may be given by advertisement, without a separate notice to each contributory.

Service of notice of a call.

Forms 57 and 62.

94. When, in pursuance of a resolution of the committee of inspection or an order of the Court, a call has been made by the liquidator, a copy of the resolution or order shall be forthwith served upon each of the contributories included in such call, together with a notice from the liquidator specifying the amount or balance due from such contributory in respect of such call, but such resolution or order need not be advertised unless for any special reason the Court so directs.

Enforcement of call.

Forms 63, 64, and 65.

95. The payment of the amount due from each contributory on a call may be enforced by order of the Court to be made in chambers on summons by the liquidator (*s*).

Proofs (*t*).

Proof of debt.

96. Every creditor shall prove his debt.

[§ 107 of Act of 1862, and § 13 of Act of 1890.]

97. A debt may be proved by delivering or sending through the post (*u*) in a prepaid letter to the Official Receiver, or, if a liquidator has been appointed, to the liquidator, an affidavit verifying the debt (*x*).

Mode of proof.

Verification of proof.

98. The affidavit may be made by the creditor himself, or by some person authorised by or on behalf of the creditor (*y*). If made by a person so authorised, it shall state his authority and means of knowledge (*z*).

Contents of proof.

Form 66.

99. The affidavit shall contain or refer to a statement of account showing the particulars of the debt, and shall specify the vouchers, if any, by which the same can be substantiated. The Official Receiver or liquidator may at any time call for the production of the vouchers.

Statement of security.

100. The affidavit shall state whether the creditor is or is not a secured creditor.

Costs of proof.

101. A creditor shall bear the cost of proving his debt, unless the Court otherwise orders (*a*).

Discount.

102. A creditor proving his debt shall deduct therefrom all trade discounts, but he shall not be compelled to deduct any discount, not exceeding five per centum on the net amount of his claim, which he may have agreed to allow for payment in cash.

(*s*) For the mode of enforcing the order, see Companies Act, 1862, § 120, and *ante*, p. 1147.

(*t*) See *ante*, pp. 991 *et seq.*, and as to proofs for voting at the first meeting, see Comp. (Winding-up) Act, 1890, Sched. I.

(*u*) See Interpretation Act, 1889, 52 & 53 Vict. c. 63, § 26.

(*x*) Bills of exchange, promissory notes, and other negotiable instruments must be produced. See r. 107.

(*y*) As to person before whom the affidavit may be sworn, see the Rule, 3rd December, 1892, *infra*, p. 1557.

(*z*) As to proof for workmen's wages, see r. 106; as to proofs by persons appointed by the Court to prove, see *Ex parte Hare*, 10 Ch. 218.

(*a*) As to costs of an appeal to the Court, see *National Whole Meal Bread, &c., Co.* [1892], 2 Ch. 745.

Periodical payments.

103. When any rent or other payment falls due at stated periods, and the order to wind up is made at any time other than one of those periods, the person entitled to the rent or payment may prove for a proportionate part thereof up to the date of the winding-up order as if the rent or payment grew due from day to day (*b*).

Interest.

104. On any debt or sum certain, payable at a certain time or otherwise, whereon interest is not reserved or agreed for, and which is overdue at the date of the winding-up order, the creditor may prove for interest at a rate not exceeding four per centum per annum to the date of the commencement of the winding up from the time when the debt or sum was payable, if the debt or sum is payable by virtue of a written instrument at a certain time, and if payable otherwise, then from the time when a demand in writing has been made giving notice that interest will be claimed from the date of the demand until the time of payment (*c*).

Proof for debt payable at a future time.

105. A creditor may prove for a debt not payable when the winding-up order was made, as if it were payable immediately, subject to a rebate of interest at the rate of five per centum per annum computed from the date of the winding up to the time when the debt would have become payable according to the terms on which it was contracted (*d*).

Workmen's wages.
Form 67.

106. In any case in which it appears from the statement of affairs that there are numerous claims for wages by workmen and others employed by the company, it shall be sufficient if one proof for all such claims is made either by a foreman or by some other person on behalf of all such creditors. Such proof shall have annexed thereto, as forming part thereof, a schedule setting forth the names of the workmen and others, and the amounts severally due to them. Any proof made in compliance with this rule shall have the same effect as if separate proofs had been made by each of the said workmen and others (*e*).

Production of bills of exchange and promissory notes.

107. Where a creditor seeks to prove in respect of a bill of exchange, promissory note, or other negotiable instrument or security on which the company is liable, such bill of exchange, note, instrument, or security must, subject to any special order of the Court made to the contrary, be produced to the Official Receiver, chairman of a meeting, or liquidator, as the case may be, and be marked by him before the proof can be admitted either for voting or for any purpose.

Time for lodging proofs.

108. A proof intended to be used at the first meeting of creditors or at an adjournment thereof shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting, or adjourned meeting.

Transmission of proofs to liquidator.

109. Where a liquidator is appointed all proofs of debts that have been received by the Official Receiver shall be handed over to the liquidator. But the Official Receiver shall first make a list of such proofs, and take a receipt thereon from the liquidator for such proofs.

Admission and Rejection of Proofs, and Appeal to the Court.

Examination of proof.
Form 68.

110. The liquidator shall examine every proof and the grounds of the debt, and in writing admit or reject it, in whole or in part, or require

(*b*) As to proof for future rent, see *ante*, p. 1017.

(*c*) This rule is substituted for r. 26 of the Rules of 1862, which was *ultra vires*; this rule appears to be valid, as, in the cases mentioned, a jury could award damages under 3 & 4 Wm. IV. c. 42, § 28. See *ante*, pp. 1008, 1009.

(*d*) See *Ex parte Ador* [1891], 2 Q. B. 574, and *ante*, p. 1010.

(*e*) As to the priority of wages, see *ante*, pp. 999 and 1000.

Rules 110—119.

further evidence in support of it. If he rejects a proof he shall state in writing to the creditor the grounds of the rejection (*f*).

Appeal by creditor.

111. If a creditor or contributory is dissatisfied with the decision of the liquidator in respect of a proof, the Court may, on the application (*g*) of the creditor or contributory, reverse or vary the decision; but, subject to the power of the Court to extend the time (*h*), no application to reverse or vary the decision of the liquidator rejecting a proof shall be entertained unless notice of the application is given before the expiration of 21 days from the date of the rejection.

Expunging at instance of liquidator.

112. If the liquidator thinks that a proof has been improperly admitted, the Court may, on the application (*g*) of the liquidator, after notice to the creditor who made the proof, expunge the proof or reduce its amount.

Expunging at instance of creditor.

113. The Court may also expunge or reduce a proof upon the application (*g*) of a creditor or contributory if the liquidator declines to interfere in the matter.

Oaths.

114. For the purpose of any of his duties in relation to proofs, the liquidator may administer oaths and take affidavits.

Official Receiver's powers, &c.

115. The Official Receiver, before the appointment of a liquidator, shall have all the powers of a liquidator with respect to the examination, admission, and rejection of proofs, and any act or decision of his in relation thereto shall be subject to the like appeal.

Filing proofs by Official Receiver.

116. The Official Receiver, where no other liquidator is appointed, shall, before payment of a dividend, file all proofs tendered in the winding up, with a list thereof, distinguishing in such list the proofs which were wholly or partly admitted, and the proofs which were wholly or partly rejected.

Proofs to be filed.

117. Every liquidator other than the Official Receiver shall, on the first day of every month, file with the proceedings a certified list of all proofs, if any, received by him during the month next preceding, distinguishing in such lists the proofs admitted, those rejected, and such as stand over for further consideration; and, in the case of proofs admitted or rejected, he shall place the proofs on the file of proceedings.

Procedure where creditor appeals.

118. The Official Receiver, or, as the case may be, the liquidator, shall, within three days after receiving notice from a creditor of his intention to appeal against a decision rejecting a proof, file such proof, with a memorandum thereon of his disallowance thereof.

Time for admission or rejection of proofs by Official Receiver.

119. *Subject to the powers of the Court to extend the time* (*i*), *the Official Receiver as liquidator, not less than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall, in writing, either admit or reject wholly or in part every proof lodged with him, or require further evidence in support of it* (*k*).

(*f*) As to the liquidator's power to deal with a set-off, see *National Whole Meal Bread, &c., Co.* [1892], 2 Ch. 457. As to the time within which the proof must be admitted or rejected, see r. 120, and Rules, 1892, r. 29.

(*g*) See in Courts other than the High Court, r. 5 (g). As to costs, see *National Whole Meal Bread, &c., Co.* [1892], 2 Ch. 457. As to who may apply, see *Canadian Pacific, &c., Corp.*, W. N. 1891, 122.

(*h*) Rules, 1890, r. 176.

(*i*) Rules, 1890, r. 176.

(*k*) This rule has been repealed and re-enacted by Rules, 1892, r. 29, with the substitution of the word "later" for the word "less."

Rules 120—122.

Time for admission or rejection of proofs by liquidator.

120. Subject to the power of the Court to extend the time (*l*), the liquidator, other than the Official Receiver, within twenty-eight days after receiving a proof, which has not previously been dealt with, shall in writing either admit or reject it wholly or in part, or require further evidence in support of it. Provided that where the liquidator has given notice of his intention to declare a dividend, he shall, within fourteen days after the date mentioned in the notice as the latest date up to which proofs must be lodged, examine and in writing admit or reject every proof which has not been already dealt with, and give notice of his decision rejecting a proof wholly or in part to the creditors affected thereby.

Costs of appeals from decisions as to proofs.

121. The Official Receiver shall in no case be personally liable for costs in relation to an appeal from his decision rejecting any proof wholly or in part (*m*).

Dividends (*mm*).

Notice of intended dividend.

Forms 69, 70, and 72.

122.—(1.) Not more than two months before declaring a dividend, the liquidator shall give notice of his intention to do so to the Board of Trade in order that the same may be gazetted (*n*), and at the same time to such of the creditors mentioned in the statement of affairs as have not proved their debts. Such notice shall specify the latest date up to which proofs must be lodged, which shall be not less than fourteen days from the date of such notice.

(2.) Where any creditor, after the date mentioned in the notice of intention to declare a dividend as the latest date up to which proofs may be lodged, appeals against the decision of the liquidator rejecting a proof, notice of appeal shall, subject to the power of the Court to extend the time in special cases (*o*), be given within seven days from the date of the notice of the decision against which the appeal is made, and the liquidator may in such case make provision for the dividend upon such proof, and the probable costs of such appeal in the event of the proof being admitted. Where no notice of appeal has been given within the time specified in this rule, the liquidator shall exclude all proofs which have been rejected from participation in the dividend.

(3.) Immediately after the expiration of the time fixed by this rule for appealing against the decision of the liquidator he shall proceed to declare a dividend, and shall give notice to the Board of Trade (in order that the same may be gazetted) (*p*), and shall also send a notice of dividend to each creditor whose proof has been admitted.

(4.) If it becomes necessary, in the opinion of the liquidator and the committee of inspection, to postpone the declaration of the dividend beyond the limit of two months, the liquidator shall give a fresh notice of his intention to declare a dividend to the Board of Trade in order that the same may be gazetted (*q*); but it shall not be necessary for the liquidator to give a fresh notice to such of the creditors mentioned in the statement of affairs as have not proved their debts. In all other respects the same procedure shall follow the fresh notice as would have followed the original notice.

(*l*) Rules, 1890, r. 176.

(*m*) In other cases, see *W. Powell & Sons* [1896], 1 Ch. 681; *Hounslow Brewery Co.*, W. N. 1896, p. 45.

(*mm*) See, too, the regulations of the Board of Trade, *infra*, p. 1593.

(*n*) For form, see Form 86 (4).

(*o*) Rules, 1890, r. 176.

(*p*) For form, see Form 86 (5).

(*q*) For form, see Form 86 (4).

APPENDIX VII.

Rules 123—127.

Proxies (*r*).

Time for lodging. Forms 73 and 74.

123.—(1.) A proxy shall be lodged with the Official Receiver or liquidator not later than four o'clock in the afternoon of the day before the meeting or adjourned meeting at which it is to be used.

No minor to be proxy.

(2.) No person shall be appointed a general or special proxy who is a minor.

Use of proxies by deputy Official Receiver.

124. Where an Official Receiver who holds any proxies cannot attend the meeting for which they are given, he may, in writing, depute some person under his official control to use the proxies on his behalf, and in such manner as he may direct.

Filling in where creditor blind or incapable.

125. The proxy of a creditor blind or incapable of writing may be accepted, if such creditor has attached his signature or mark thereto in the presence of a witness, who shall add to his signature his description and residence; provided that all insertions in the proxy are in the handwriting of the witness, and such witness shall have certified at the foot of the proxy that all such insertions have been made by him at the request of the creditor and in his presence before he attached his signature or mark.

Statements by Liquidator to the Registrar of Joint Stock Companies (*s*).

Conclusion of liquidation. [Act of 1890, § 15 (1).]

126. The winding up of a company shall for the purposes of section 15 of the Companies (Winding-up) Act, 1890, be deemed to be concluded—

(a.) In the case of companies wound up by order of the Court, at the date on which the order dissolving the company has been reported by the liquidator to the registrar of joint stock companies (*t*).

(b.) In the case of companies wound up voluntarily or under the supervision of the Court, at the date of the dissolution of the company (*u*), unless at such date any funds or assets of the company remain unclaimed or undistributed in the hands or under the control of the liquidator, or any person who has acted as liquidator, in which case the winding up shall not be deemed to be concluded until such funds or assets have either been distributed or paid into the Companies Liquidation Account at the Bank of England.

Times at which liquidator's statements are to be sent (*v*).

127. The statements with respect to the proceedings in and position of a liquidation of a company, the winding up of which is not concluded within a year after its commencement, shall be sent twice in every year as follows (*v*):—

(1.) Where the winding up commenced on or before the first day of April, 1890, and was not concluded before the 1st day of April,

(*r*) See also as to proxies at the first meetings, Comp. (Winding-up) Act, 1890, First Schedule (12) to (19), and Rules, 1892, r. 30. And generally as to proxies, *ante*, pp. 429, 430. As to exemption from stamp duty, see 58 Vict. c. 16, § 16.

(*s*) See *ante*, pp. 946 *et seq.*

(*t*) See Companies Act, 1862, § 111.

(*u*) Ib. § 143.

(*v*) This and the subsequent rules, printed as rules 127, 127A, 127B, 127C, 127D, 132A, and 130A, and a rule annulling the former rules 127 and 130, are the rules of the 30th April, 1891. They came into operation on the 31st May, 1891. The forms annexed to them are incorporated in the Schedule.

1891, the first statement, brought down to the 31st day of March, 1891, shall be sent within 30 days from the first day of May, 1891, or within such extended period as the Board of Trade, or (where the winding up is by or subject to the supervision of the Court) as the Judge may in any particular case sanction, and the next statement, brought down to the 30th day of September, 1891, shall be sent within 30 days from that date.

(2.) Where the winding up did not commence on or before the first day of April, 1890, the first statement, commencing at the date when a liquidator was first appointed and brought down to the end of 12 months from the commencement of the winding up, shall be sent within 30 days from the expiration of such 12 months, or within such extended period as the Board of Trade may sanction.

(3.) The subsequent statements shall be sent at intervals of half a year, each statement being brought down to the end of the half year for which it is sent (*x*).

Regulations as to statements.

127A.—(1.) Subject to the next succeeding rule, Form No. 75, with such variations as circumstances may require, shall be used, and the directions specified in the form shall (unless the Board of Trade otherwise direct) be observed in reference to every statement.

(2.) Every statement shall be sent in duplicate, and shall be verified by an affidavit in the Form No. 75A, with such variations as circumstances may require (*x*).

Liquidations commenced before April 1st, 1890.

127B. Where the winding up commenced on or before the first day of April, 1890, and was not concluded before the first day of April, 1891—

(1.) The first statement shall, unless the Board of Trade, on the application of the liquidator, otherwise direct, commence at the date when a liquidator was first appointed.

(2.) In any winding up in which the accounts of the liquidator have been passed in the chambers of a Judge of the Chancery Division of the High Court prior to the first day of January, 1891, and in any case in which it shall appear to the Board of Trade inexpedient to require a detailed statement of all the liquidator's receipts and payments on account of the company, the statement may be sent in the form of such a summary of the liquidator's accounts as the Board of Trade shall approve (*y*).

Affidavit of no receipts or payments.

127C. Where a liquidator has not during any period for which a statement has to be sent received or paid any money on account of the company, he shall at the period when he is required to transmit his statement, send to the registrar of joint stock companies an affidavit of no receipts or payments in the Form No. 75A (*z*).

Unclaimed Funds and Undistributed Assets in the hands of the Liquidator (*zz*).

Payment of undistributed and unclaimed money into Companies Liquidation Account.

127D.—(1.) All money in the hands or under the control of a liquidator of a company representing unclaimed dividends, which for six months

(*x*) See note (*v*), *ante*, p. 1472.

(*y*) See note (*v*), *ante*.

(*z*) See note (*v*), *ante*, p. 1472. This form as subsequently altered by the Board of Trade will be found in the Appendix to these rules. It was substituted for an earlier form, No. 75.

(*zz*) See too the regulations of the Board of Trade, *infra*, p. 1592.

from the date when the dividend became payable have remained in the hands or under the control of the liquidator, shall forthwith, on the expiration of the six months, be paid into the Companies Liquidation Account.

(2.) All other money in the hands or under the control of a liquidator of a company, representing unclaimed or undistributed assets, which under sub-section 3 of section 15 of the Companies (Winding-up) Act, 1890, the liquidator is to pay into the Companies Liquidation Account, shall be ascertained as on the date to which the statement of receipts and payments sent in to the registrar of joint stock companies is brought down, and the amount to be paid to the Companies Liquidation Account shall be the minimum balance of such money which the liquidator has had in his hands or under his control during the six months immediately preceding the date to which the statement is brought down, less such part (if any) thereof as the Board of Trade may authorise him to retain for the immediate purposes of the liquidation. Such amount shall be paid into the Companies Liquidation Account within 14 days from the date to which the statement of account is brought down (*a*).

Duty of liquidator to furnish information to Board of Trade.

128. Every person who has acted as liquidator of any company, whether the liquidation has been concluded or not, shall furnish to the Board of Trade particulars of any money in his hands or under his control representing unclaimed or undistributed assets of the company on the 1st January, 1891, or subsequently, and such other particulars as the Board of Trade may require for the purpose of ascertaining or getting in any money payable into the Companies Liquidation Account at the Bank of England. The Board of Trade may require such particulars to be verified by affidavit (*b*).

Power of Board of Trade to call for verified accounts.

Form 82.

129.—(1.) The Board of Trade may at any time order any such person to submit to them an account verified by affidavit of the sums received and paid by him as liquidator of the company, and may direct and enforce an audit of the account.

(2.) For the purposes of section 15 of the Companies (Winding-up) Act, 1890, and these rules, the Court (as hereinafter defined) shall have and, at the instance of the Board of Trade, may exercise all the powers conferred by the Bankruptcy Act, 1883, with respect to the discovery and realisation of the property of a debtor, and the provisions of Part I. of that Act with respect thereto shall, with any necessary modifications, apply to proceedings under section 15 of the Companies (Winding-up) Act, 1890.

Applications to the Court for enforcing accounts and getting in money.

130A. Every application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England pursuant to section 15 of the Companies (Winding-up) Act, 1890—

(a.) *Where the winding up is by or subject to the supervision of the High Court, shall be made to and dealt with by the Judge to whom the winding up is assigned, upon motion in accordance with the practice of the Chancery Division of the High Court relating to motions* (*c*);

(b.) Where the winding up is in the Stannaries Court, shall be made upon motion before the vice-warden (*cc*);

(*a*) See note (*v*), *ante*, p. 1472.

(*b*) Form 82.

(*c*) See note (*v*), *ante*, p. 1472. The paragraph in italics was repealed by Rules, 1892, and replaced by r. 16 of those rules.

(*cc*) Now the County Court of Truro, see *ante*, p. 1372, note (*r*).

(c.) Where the winding up is in a Palatine Court or a County Court, shall be made to that Court;

(d.) In other cases, shall be made to the Judge of the High Court who for the time being exercises the jurisdiction of the High Court in Bankruptcy (*d*), and in accordance with the practice which is observed in reference to applications by the Board of Trade under section 162 of the Bankruptcy Act, 1883.

Mode of payment into Companies Liquidation Account. [Act of 1890, § 15.]

131. Any liquidator whose duty it is under section 15 of the Companies (Winding-up) Act, 1890, to pay into the Companies Liquidation Account at the Bank of England, any money representing unclaimed or undistributed assets of the company shall apply in such manner as the Board of Trade may direct to the Board of Trade for a paying-in order, which paying-in order shall be an authority to the Bank of England to receive the payment.

Application for payment out by person entitled.

132. An application by a person claiming to be entitled to any money paid into the Bank of England in pursuance of section 15 of the Companies (Winding-up) Act, 1890, shall be made in such form and manner as the Board of Trade may from time to time direct, and shall, unless the Board of Trade otherwise directs, be accompanied by the certificate of the liquidator that the person claiming is entitled, and such further evidence as the Board of Trade may direct.

Application by liquidator for money to be paid out.

132A. Where the liquidator requires to make payments out of money paid into the Bank of England, in pursuance of section 15 of the Companies (Winding-up) Act, 1890, either by way of distribution or in respect of the costs and expenses of the proceedings, he shall apply in such form and manner as the Board of Trade may direct, and the Board of Trade may thereupon either make an order for the payment out to him of the sum required to make such payments, or may direct cheques to be issued to him for transmission to the persons to whom the payments are to be made (*dd*).

Transfer of funds to Companies Liquidation Account.

133.—(1.) For the purposes of sub-section 3 of section 15 of the Companies (Winding-up) Act, 1890, money at the credit of the account of the official liquidator of any company with the Bank of England shall be deemed to be money under the control of the official liquidator, and when such money has remained unclaimed or undistributed for six months after the date of receipt it shall be transferred to the Companies Liquidation Account, and the official liquidator and chief clerk (*e*) of the Chancery Division of the High Court shall draw and sign such cheques or orders as may be necessary for the transfer of the money.

(2.) Any application to the Board of Trade for payment out of moneys so transferred shall be signed by the liquidator and countersigned by the chief clerk of the Judge of the Chancery Division to whom the winding up is assigned.

Investment of Funds (*f*).

Investment of assets in securities, and realisation of securities. Forms 83 and 84.

134.—(1.) Where the Committee of Inspection are of opinion that any part of the cash balance standing to the credit of the account of the company should be invested, they shall sign a certificate and request, and the liquidator shall transmit such certificate and request to the Board of Trade.

(*d*) Now to the judge who exercises the jurisdiction under the Act of 1890, see Rules, 1892, rr. 1, 3 (1) and 35, and *Mottram's Brewery, Ld.*, Byrne, J., 31st Jan., 1902 (not reported).

(*dd*) See note (*v*), *ante*, p. 1472. See too the regulations of the Board of Trade, *infra*, pp. 1592, 1593.

(*e*) See Rules, 1892, r. 35.

(*f*) See Comp. (Winding-up) Act 1890, § 17.

APPENDIX VII.

Rules 134—140.

(2.) Where the Committee of Inspection are of opinion that it is advisable to sell any of the securities in which the monies of the company's assets are invested they shall sign a certificate and request to that effect, and the liquidator shall transmit such certificate and request to the Board of Trade.

Accounts and Audit (*g*).

Audit of cash book.

[Act of 1890, § 20.]

135. The Committee of Inspection shall not less than once every three months audit the liquidator's cash book (*h*), and certify therein under their hands the day on which the said book was audited.

Form 76.

Board of Trade audit of liquidator's accounts.

136.—(1.) Every liquidator shall, at the expiration of six months from the date of the winding-up order and at the expiration of every succeeding six months thereafter until his release, transmit to the Board of Trade a copy of the cash book for such period in duplicate, together with the necessary vouchers and copies of the certificates of audit by the Committee of Inspection. He shall also forward with the first accounts a summary of the company's statement of affairs, in such form as the Board of Trade may direct, showing thereon in red ink the amounts realised, and explaining the cause of the non-realisation of such assets as may be unrealised.

(2.) When the assets of the company have been fully realised and distributed, the liquidator shall forthwith send in his accounts to the Board of Trade, although the six months may not have expired.

Form 77.

(3.) The accounts sent in by the liquidator shall be certified and verified by him.

Liquidator carrying on business.

137.—(1.) Where the liquidator carries on the business of the company, he shall keep a distinct account of the trading, and shall incorporate in the cash book the total weekly amount of the receipts and payments on such trading account.

Forms 80 and 81.

(2.) The trading account shall from time to time, and not less than once in every month, be verified by affidavit, and the liquidator shall thereupon submit such account to the Committee of Inspection (if any), or such member thereof as may be appointed by the committee for that purpose, who shall examine and certify the same.

Copy of accounts to be filed.

138. When the liquidator's account has been audited, the Board of Trade shall certify the fact upon the account, and thereupon the duplicate copy, bearing a like certificate, shall be filed (*i*) with the proceedings in the winding up.

Summary of accounts.

139.—(1.) The liquidator shall transmit to the Board of Trade with his accounts a summary of such accounts in such form as the Board of Trade from time to time direct, and on the approval of such summary by the Board of Trade, shall forthwith obtain, prepare, and transmit to the Board of Trade so many printed copies thereof, duly stamped for transmission by post, and addressed to the creditors and contributories, as may be required for transmitting such summary to each creditor and contributory.

(2.) The cost of printing and posting such copies shall be a charge upon the assets of the company.

Affidavit of no receipts.

140. Where a liquidator has not since the date of his appointment or

(*g*) See *ante*, p. 973; and as to the pass book when the liquidator has a special bank account, see the regulations of the Board of Trade, *infra*, p. 1592. These rules do not apply to the Official Receiver when he is liquidator. See Rules, 1890, r. 168.

(*h*) For the contents of this book, see rr. 137 and 144.

(*i*) Rules, 1892, rr. 11, 31–33.

since the last audit of his accounts, as the case may be, received or paid any sum of money on account of the assets of the company, he shall, at the time when he is required to transmit his accounts to the Board of Trade, forward to the Board an affidavit of no receipts or payments (*j*).

Proceedings on resignation, &c., of liquidator.

141. Upon a liquidator resigning, or being released or removed (*k*) from his office, he shall deliver over to the Official Receiver, or, as the case may be, to the new liquidator, all books kept by him, and all other books, documents, papers, and accounts in his possession relating to the office of liquidator. The release of a liquidator shall not take effect unless and until he has delivered over to the Official Receiver all the books, papers, documents, and accounts which he is by this rule required to deliver on his release (*l*).

Expenses of sales.

142. Where property forming part of a company's assets is sold by the liquidator through an auctioneer or other agent, the gross proceeds of the sale shall be paid over by such auctioneer or agent, and the charges and expenses connected with the sale shall afterwards be paid to such auctioneer or agent, on the production of the necessary certificate of the taxing officer (*m*). Every liquidator, by whom such auctioneer or agent is employed, shall, unless the Court otherwise orders, be accountable for the proceeds of every such sale.

Books (*mm*).

Record book. [§ 21 of Act of 1890.]

143. The Official Receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a book to be called the "record book," in which he shall record all minutes, all proceedings had and resolutions passed at any meeting of creditors or contributories, or of the committee of inspection, and all such matters as may be necessary to give a correct view of his administration of the company's affairs, but he shall not be bound to insert in the "record book" any document of a confidential nature (such as the opinion of counsel on any matter affecting the interest of the creditors or contributories), nor need he exhibit such document to any person other than a member of the committee of inspection.

Cash book.

144.—(1.) The Official Receiver, until a liquidator is appointed by the Court, and thereafter the liquidator, shall keep a book to be called the "cash book" (which shall be in such form as the Board of Trade may from time to time direct), in which he shall (subject to the provisions of these rules as to trading accounts) enter from day to day the receipts and payments made by him (*n*).

(2.) The liquidator shall submit the record book and cash book, together with any other requisite books and vouchers, to the committee of inspection (if any) when required, and not less than once every three months (*o*).

(*j*) For form of affidavit, see Form 77.

(*k*) For the power to remove the liquidator, see *ante*, p. 970.

(*l*) See Comp. (Winding-up) Act, 1890, § 22, and rr. 148 and 149.

(*m*) See rr. 27 and 29, and the regulations of the Board of Trade, *infra*, p. 1593.

(*mm*) See *ante*, pp. 974, 975.

(*n*) As to entry in cash book of separate trading account, see r. 137.

(*o*) See also rr. 135 and 137. The Board of Trade may direct a local investigation of the liquidator's books, Comp. (Winding-up) Act, 1890, § 25 (3).

APPENDIX VII.

Rules 145—147.

Register of proceedings in Judges' chambers.

[See Gen. Order of 1862, r. 57; and O LV., r. 73 of R. S. C., 1883.]

File of proceedings.

* *Sic.*

Register and file of proceedings (p).

145. *A register shall be kept in the chambers of the Judge of all proceedings held there in each matter with proper dates, so that all the proceedings in each cause or matter may appear consecutively and in chronological order, with a short statement of the questions or points decided or ruled at every hearing, and no documents or proceedings are to be filed in the chambers of the Judge unless the Court, by any general or special order, otherwise directs.*

146.—(1.)* *The file of proceedings shall be kept by the Official Receiver, and all orders, reports, exhibits, admissions, memorandums, and office copies of affidavits, examinations, depositions, and certificates, and all other documents relating to the winding up of any company shall be placed on the file by the Official Receiver or the liquidator, as far as may be in continuous order. Every contributory of the company, and every creditor thereof whose proof or claim has been admitted, and every person who has been a director or officer of the company, shall be entitled, at all reasonable times, to inspect the file free of charge, and, at his own expense, to take copies or extracts from any of the documents comprised therein, or to be furnished with such copies or extracts at a rate not exceeding threepence per folio of seventy-two words; and the file shall be produced in Court, or before the Judge, and otherwise as occasion may require (q).*

Memorandum of advertisements.

Form 87.

147.—(1.) Whenever the London Gazette contains any advertisement relating to any winding up to which these rules apply, the liquidator shall file with the proceedings a memorandum referring to and giving the date of the advertisement.

(2.) In the case of an advertisement in a local paper, the Official Receiver shall keep a copy of the paper, and a memorandum referring to and giving the date of the advertisement shall be placed on the file.

(p) For form of register of winding-up orders, see Form 88, and of petitions, see Form 89.

(q) These rules were repealed by the Rules, 1892, and replaced by ib. rr. 11, 31–33. See, too, Rules, November, 1895. The file is now kept at the office of the registrar, Rules, 1892, r. 11.

The documents the filing of which is specially directed by these rules, are :—

- Bills of costs, &c., when taxed, r. 27.
- Report of the Official Receiver in support of his application for the appointment of a special manager, r. 42 (1).
- Statement of affairs under § 7: r. 58 (1).
- Certificate extending time for submitting statement of affairs, r. 59.
- Certificate that liquidator or special manager has given the required security, r. 67 (4).
- Notes of every public examination held under the Act, r. 77.
- List of proofs, rr. 116, 117.
- Rejected proofs against the rejection of which the creditor appeals, r. 118.
- Duplicate copy of liquidator's account when audited, r. 138.
- Memorandum of advertisements, r. 147.
- Report supporting an application by the Board of Trade to examine a liquidator on oath, r. 171 (1).
- Petitions, affidavits, &c., Rules, 1892, r. 11.
- As to depositions of examination under § 115 of the Act, 1862, see Rules, November, 1895.
- As to inspection, see Rules, 1892, 31–33.

(3.) For this purpose one copy of each local paper in which any advertisement relating to any winding-up proceeding in the Court is inserted, shall be left with the Official Receiver by the person who inserts the advertisement.

(4.) A memorandum under this rule shall be *primâ facie* evidence that the advertisement to which it refers was duly inserted in the issue of the Gazette or newspaper mentioned in it.

Release of Liquidator (qq).

Application for release.

148. A liquidator, before making application to the Board of Trade for his release, shall give notice of his intention so to do to all the creditors who have proved their debts and to all the contributories, and shall send with the notice a summary of his receipts and payments as liquidator. [§ 22 of Act of 1890.]

Forms 78 and 79 (r).

149. Where the Board of Trade have granted to a liquidator his release, a notice of the order granting the release shall be gazetted (s). The liquidator shall provide the requisite stamp fee for the Gazette, which he may charge against the company's assets.

Gazetting release.

Books to be kept, and Returns made, by Officers of Courts.

Books to be kept by officers of Courts.

150. In the High Court the chief clerks of the Chancery Division (t), and in the district registries of the High Court at Liverpool and Manchester respectively the district registrars of the High Court, and in a Court other than the High Court, the registrar or other officer of the Court whose duty it is to perform under direction of the Judge the duties which in a County Court are performed by the registrar, shall keep books according to the forms in the Appendix, and the particulars given under the different heads in such books shall be entered forthwith after each proceeding has been concluded. [§ 29 of Act of 1890.]

Forms 88 and 89.

Extracts to be sent to Board of Trade.

151. The officers of the Courts whose duty it is to keep the books prescribed by these rules shall make and transmit to the Board of Trade such extracts from their books, and shall furnish the Board of Trade with such information and returns as the Board of Trade may from time to time require.

Gazetting.

Gazetting notices.

152. All notices subsequent to the making by the Court of a winding-up order in pursuance of the Act or these rules requiring publication in the London Gazette shall be gazetted by the Board of Trade (u). Form 86.

(qq) See *ante*, p. 984 and r. 141; and as to the repayment of disbursements see the regulations of the Board of Trade, *infra*, pp. 1592, 1593.

(r) For form of statement to accompany notice, see Form 71.

(s) See Form 86 (7).

(t) Now the registrar, see Rules, 1892, r. 35.

(u) The notices subsequent to the making of the winding-up order of which the gazetting is directed by these rules are notices

of the winding-up order, r. 41;
of the first meetings of creditors and contributories, r. 44;
of the appointment of a liquidator, r. 63 (5).
of the order appointing a time and place for holding a public examination under § 8, r. 75;
of an intended dividend, r. 122 (1);
of the declaration of dividend, r. 122 (3);
of an intended dividend when the declaration of the dividend has been postponed, r. 122 (4);
of the order granting liquidator his release, r. 149.

Any alterations in the forms in the Appendix by the Board of Trade also

APPENDIX VII.

Rules 153—159.

Re-gazetting.

153. Where any winding-up order is amended, and also in any case in which any matter which has been gazetted has been amended or altered, or in which a matter has been wrongly or inaccurately gazetted, the Board of Trade shall re-gazette such order or matter with the necessary amendments and alterations in the prescribed form, at the expense of the company's assets, or otherwise as the Board of Trade may direct.

Liquidators and Committees of Inspection.

Remuneration of liquidator.

154.—(1.) The remuneration (*x*) of a liquidator shall, unless the Court shall otherwise order, be fixed by the committee of inspection, and shall be in the nature of a commission or percentage of which one part shall be payable on the amount realised after deducting the sums (if any) paid to secured creditors out of the proceeds of their securities and the other part on the amount distributed in dividend.

(2.) If there is no Committee of Inspection the remuneration of the liquidator shall be in accordance with the scale of percentage payable for realisations and distributions by the Official Receiver as liquidator.

Limit of remuneration.

155. Except as provided by the Acts or these rules, no liquidator shall be entitled to receive out of the estate any remuneration for services rendered to the company, except the remuneration to which under the Acts and rules he is entitled as liquidator.

Dealings with assets.

156. Neither the liquidator nor any member of the Committee of Inspection of a company shall, while acting as liquidator or member of such committee, except by leave of the Court, either directly or indirectly, by himself or any partner, clerk, agent, or servant, become purchaser of any part of the company's assets. Any such purchase made contrary to the provisions of this rule may be set aside by the Court on the application of the Board of Trade or any creditor or contributory, and the Court may make such order as to costs as the Court shall think fit.

Liquidator not to purchase from his employer or partner without Court's sanction.

157. Where the liquidator carries on the business of the company, he shall not, without the express sanction of the Court, purchase goods for the carrying on of such business from any person whose connection with the liquidator is of such a nature as would result in the liquidator obtaining any portion of the profit (if any) arising out of the transaction.

Committee of inspection.

158. No member of a committee of inspection, in a winding up shall, except under and with the sanction of the Court, directly or indirectly, by himself or any employer, partner, clerk, agent, or servant, be entitled to derive any profit from any transaction arising out of the winding up, or to receive out of the assets any payment for services rendered by him in connection with the administration of the assets, or for any goods supplied by him to the liquidator for or on account of the company. If it appears to the Board of Trade that any profit or payment has been made contrary to the provisions of this rule they may disallow such payment or recover such profit, as the case may be, on the audit of the liquidator's accounts.

Costs of obtaining sanction.

159. In any case in which the sanction of the Court is obtained under the two last preceding rules, the cost of obtaining such sanction shall be borne by the person in whose interest such sanction is obtained, and shall not be payable out of the company's assets.

require to be gazetted, r. 3. The petition must be advertised in the Gazette, r. 34.

(*x*) See *ante*, p. 971.

160. Where the sanction of the Court to a payment to a member of a Committee of Inspection for services rendered by him in connection with the administration of the company's assets is obtained, the order of the Court shall specify the nature of the services, and shall only be given where the service performed is of a special nature. No payment shall, under any circumstances, be allowed to a member of a committee for services rendered by him in the discharge of the duties attaching to his office as a member of such committee.

Sanction of payments to members of Committee of Inspection.

161.—(1.) Where a liquidator is appointed by the Court, the Official Receiver shall forthwith put the liquidator into possession of all property of the company of which the Official Receiver may have custody; provided that such liquidator shall have, before the assets are handed over to him by the Official Receiver, discharged any balance due to the Official Receiver on account of fees, costs, and charges properly incurred by him, and on account of any advances properly made by him in respect of the company, together with interest on such advances at the rate of four pounds per centum per annum; and the liquidator shall pay all fees, costs, and charges of the Official Receiver which may not have been discharged by the liquidator before being put into possession of the property of the company, and whether incurred before or after he has been put into such possession.

Discharge of costs, &c., before assets handed over to liquidator.

(2.) The Official Receiver shall be deemed to have a lien upon the company's assets until such balance shall have been paid and the other liabilities shall have been discharged.

(3.) It shall be the duty of the Official Receiver, if so requested by the liquidator, to communicate to the liquidator all such information respecting the estate and affairs of the company as may be necessary or conducive to the due discharge of the duties of the liquidator.

Official Receivers (y), and Board of Trade.

162.—(1.) Judicial notice shall be taken of the appointment of the Official Receivers appointed by the Board of Trade.

Appointment (z).

(2.) When the Board of Trade appoints any officer to act as deputy for or in the place of an Official Receiver, notice thereof shall be given by letter to the Court to which such Official Receiver is or was attached. The letter shall specify the duration of such acting appointment.

(3.) Any person so appointed shall, during his tenure of office, have all the status, rights, and powers, and be subject to all the liabilities of an Official Receiver.

163.—(1.)* Where an Official Receiver is removed from his office by the Board of Trade, notice of the order removing him shall be communicated by letter to the Court to which the Official Receiver was attached.

Removal.

* *Sic.*

164. The Board of Trade may, by general or special directions, determine what acts or duties of the Official Receiver in relation to the winding up of companies are to be performed by him in person, and in what cases he may discharge his functions through the agency of his clerks or other persons in his regular employ, or under his official control.

Personal performance of duties.

165. An assistant Official Receiver, appointed by the Board of Trade,

Assistant Official Receivers.

(y) See *ante*, pp. 954 *et seq.* When proceedings commenced in one Court are transferred to another, see r. 12.

(z) See Comp. (Winding-up) Act, 1890, § 4.

shall be an officer of the Court, like the Official Receiver to whom he is assistant, and, subject to the directions of the Board of Trade, he may represent the Official Receiver in all proceedings in Court, or in any administrative or other matter. Judicial notice shall be taken of the appointment of an assistant Official Receiver, and he may be removed in the same manner as is provided in the case of an Official Receiver.

Power of officers of Board of Trade and Official Receivers' clerks in certain cases to act for Official Receivers.

166. In the absence of the Official Receiver any officer of the Board of Trade duly authorised for the purpose by the Board of Trade, and any clerk of the Official Receiver duly authorised by him in writing, may by leave of the Court act on behalf of the Official Receiver, and take part for him in any public or other examination and in any unopposed application to the Court.

Duties where no assets.

167. Where a company against whom a winding-up order has been made has no available assets, the Official Receiver shall not be required to incur any expense in relation to the winding up without the express directions of the Board of Trade.

Accounting by Official Receiver.

168.—(1.) Where a liquidator is appointed by the Court the Official Receiver shall account to the liquidator.

(2.) If the liquidator is dissatisfied with the account or any part thereof, he may report the matter to the Board of Trade, who shall take such action (if any) thereon as it may deem expedient (*a*).

(3.) The provisions of these rules as to liquidators and their accounts shall not apply to the Official Receiver when he is liquidator, but he shall account in such manner as the Board of Trade may from time to time direct.

Official Receiver to act for Board of Trade where no Committee of Inspection.

169. Where there is no committee of inspection any functions of the Committee of Inspection which devolve on the Board of Trade may, subject to the directions of the Board, be exercised by the Official Receiver (*aa*).

Appeals from Board of Trade and Official Receiver.

170. An appeal in the High Court against a decision of the Board of Trade, or an appeal to the Court from an act or decision of the Official Receiver, shall be brought within twenty-one days from the time when the decision or act appealed against is done, pronounced or made (*b*).

Applications under § 25 (2) of Act of 1890.

171.—(1.) An application by the Board of Trade to the Court to examine on oath the liquidator or any other person pursuant to section twenty-five of the Companies (Winding-up) Act, 1890, shall be made *ex parte*, and shall be supported by a report to the Court filed with the proceedings, stating the circumstances in which the application is made.

(*a*) See under the Bankruptcy Act, *Ex parte Fox*, 17 Q. B. D. 4.

(*aa*) When the Official Receiver is also liquidator, see *Re Duncan* [1892], 1 Q. B. 331 and 879, a case under the Bankruptcy Act.

(*b*) The time within which an appeal may be brought may be extended, r. 176.

Leave to appeal is given under the Act and rules in the following cases:—

From Board of Trade,

From a decision respecting a claim to undistributed assets by Comp. (Winding-up) Act, 1890, § 15 (5).

Against the granting or withholding of a liquidator's release, ib. § 22 (1).

From the Official Receiver,

As to the costs, &c., allowed to a person who has taken part in preparing the statement of the company's affairs, ib. § 7 (4).

Rejection of a proof for purposes of voting. Ib. First Schedule (11) and (5), *supra*, p. 1390.

Decision respecting admission or rejection of proofs, r. 115.

For the procedure in appeals to the High Court, see Rules, 1892, r. 31 (b), and in other Courts, see Rules, 1890, r. 5.

(2.) The report may be signed by any person duly authorised to sign documents on behalf of the Board of Trade; and shall for the purposes of such application be *primâ facie* evidence of the statements therein contained.

Special Manager.

Accounts. Form 85.

172. Every special manager shall account to the Official Receiver, and such special manager's accounts shall be verified by affidavit, and, when approved by the Official Receiver, the totals of the receipts and payments shall be added to the Official Receiver's accounts (*c*).

Attendance and Appearance of Parties, &c.

Attendance at proceedings.

173. Every person for the time being on the list of contributories of the company and every person whose proof has been admitted shall be at liberty, at his own expense, to attend proceedings, and shall be entitled, upon payment of the costs occasioned thereby, to have notice of all such proceedings as he shall by written request desire to have notice of; but if the Court shall be of opinion that the attendance of any such person upon any proceedings has occasioned any additional costs which ought not to be borne by the funds of the company, he may direct such costs, or a gross sum in lieu thereof, to be paid by such person; and such person shall not be entitled to attend any further proceedings until he has paid the same.

Attendance of parties in chambers.

173A. No creditor or contributory shall be entitled to attend any proceedings in chambers, unless and until he has entered in a book, to be kept by the registrar for that purpose, his name and address, and the name and address of his solicitor (if any), and upon any change of his address or of his solicitor, his new address, and the name and address of his new solicitor (*d*).

Solicitor of liquidator.

174. Where the attendance of the liquidator's solicitor is required on any proceeding in Court or chambers, the liquidator need not attend in person, except in cases where his presence is necessary in addition to that of his solicitor, or the Court directs him to attend.

Miscellaneous Matters.

Board of Trade orders, &c.

175. The Board of Trade may from time to time issue general orders or regulations for the purpose of regulating any matters under the Act or these rules which are of an administrative and not of a judicial character. Judicial notice shall be taken of any general orders or regulations which are printed by the Queen's printers, and purport to be issued under the authority of the Board of Trade (*e*).

Enlargement or abridgment of time.

176. The Court may, in any case in which it shall see fit, extend or abridge the time appointed by these rules or fixed by any order of the Court for doing any act or taking any proceeding.

Formal defect not to invalidate proceedings.

177.—(1.) No proceeding under the Acts shall be invalidated by any formal defect or by any irregularity, unless the Court before which an

(*c*) See also Comp. (Winding-up) Act, 1890, § 5, and rr. 42, 67, and 68.

(*d*) This rule was made 19th May, 1896, and came into operation on the 1st June, 1896.

(*e*) See the regulations issued under this rule, *infra*, pp. 1592, 1593. As to the power to change the forms in the Appendix, see r. 3.

objection is made to the proceeding is of opinion that substantial injustice has been caused by the defect or irregularity, and that the injustice cannot be remedied by any order of that Court (*f*).

(2.) No defect or irregularity in the appointment or election of a Receiver, liquidator, or member of a Committee of Inspection shall vitiate any act done by him in good faith (*g*).

Application of existing procedure.

178. In all proceedings in or before the Court, or any Judge or officer thereof, or over which the Court has jurisdiction under the Acts and rules, where no other provision is made by the Acts or these rules, the practice, proceeding, and regulations shall, unless the Court otherwise in any special case directs, in the High Court and Stannaries Court be in accordance with the rules of the Supreme Court and practice of the High Court, and in a County Court and Palatine Court in accordance, as far as practicable, with the existing rules and practice of the Court in proceedings for the administration of assets by the Court (*h*).

Petitions in Liverpool and Manchester district registries.

179. The provisions of rule 2 of the rules of the Supreme Court, 1887, relating to petitions in the district registries of Liverpool and Manchester, shall apply to petitions presented in those registries under the Acts and these rules.

Rules under Order of 1862 not to apply in compulsory windings up after December 31.

180. The rules contained in the General Order of the Court of Chancery of 1862 and the forms prescribed by such rules, shall from and after the commencement of these Rules cease to have effect or apply in the winding up of any company wound up under the order of the Court where the winding-up order is made after the 31st of December, 1890 (*i*).

(Signed) HALSBURY, C.

I concur.

(Signed) M. E. HICKS BEACH,
President of the Board of Trade.

The 29th of November, 1890.

(*f*) As to errors in advertisement of petition, see *ante*, p. 884. The following cases decided under the Bankruptcy Acts may be referred to as instances of what have been held to be merely formal defects, and what matters of substance:—1. *Formal defects. Ex parte Johnson*, 25 Ch. Div. 112, an error in the summons which could not have misled. The summons was also served by a solicitor's clerk instead of by the solicitor himself, or his attorney. *Ex parte Vanderlinden*, 20 Ch. Div. 289, mistaken statement of petitioning creditor's debt. *Ex parte Kirkwood*, 11 Ch. Div. 724, misdescription of debtor. 2. *Matters of substance. Ex parte Rosenthal*, 20 Ch. Div. 315, failure to pay deposit at proper time on an appeal from the County Court. *Ex parte Jerningham*, 9 Ch. Div. 467, omission of a debtor's private residence. *Ex parte Coates*, 5 Ch. Div. 979, insufficient allegation of an act of bankruptcy. *Ex parte Torkington*, 9 Ch. 298, omission in affidavit of qualification of person making affidavit.

(*g*) See also Comp. Act, 1862, § 67.

(*h*) See also rr. 4, 5, and 6.

(*i*) See also Rules, 1892, r. 1, and as to winding up voluntarily or under supervision, ib. r. 17.

FORMS (*k*).

No. 1 (*l*).

General Title (High Court). [Rules, 1892, r. 6.)

In the High Court of Justice. No. , of 189 .
Companies (Winding-up).
MR. JUSTICE VAUGHAN WILLIAMS.
In the matter of the Companies Acts, 1862 to 1890,
and
In the matter of the (*a*) Company,
Limited.

(*a*) Insert full name of company.

No. 2.

General Title (County Court). [Rules, 1890, r. 7 (1).]

In the County Court of , holden at .
In the matter of the Companies Acts, 1862 to 1890,
and
In the matter of the (*a*) Company, Limited

(*a*) Insert full name of company.

No. 3.

Order of Transfer. [Rules 8 and 9.]

(*Title.*)

Upon the application of (*a*) and upon hearing and upon reading it is ordered that the said proceedings be transferred from the (*b*) Court to the (*c*) Court.
Dated this day of 189 .

(*a*) Name of applicant.
(*b*) Court from which the transfer is to be made.
(*c*) Court to which the transfer is to be made.

No. 4.

Notice of Transfer of Proceedings to the Board of Trade and Official Receiver. [Rule 14.]

(*Title.*)

The proceedings in the winding up of the above-named company have been, by order dated the 18 , transferred to this Court from

(*k*) These forms are printed with the alterations which have been from time to time made therein, either by the Board of Trade under Rule 3, clause 2, or by rules made under the Companies (Winding-up) Act, 1890, § 26.

(*l*) Form 1 to Rules, 1892. Now Mr. Justice Byrne or Mr. Justice Buckley, see Order, 16th Dec., 1901, *infra*, p. 1571.

APPENDIX VII. Forms 5—7.

the [High Court] *or* [the County Court of , holden at , *or as the case may be*] and have had the above letter and number allotted to them. The letter and number before transfer were .

Dated this day of 189 .

No. 5.

Appointment of Shorthand Writer to take Examination. [Rule 16.]

(*Title.*)

Before .

Upon the application of the Official Receiver the Court hereby appoints of in the county of to take the examination of at his public examination this day pursuant to Rule 16 of the Companies Winding-up Rules, 1890.

Dated this day of 189 .

No. 6.

Declaration by Shorthand Writer. [Rule 16.]

(*Title.*)

Before .

I, , of , in the county of , the shorthand writer appointed by this Court to take down the examination of , do solemnly and sincerely declare that I will truly and faithfully take down the questions and answers put and given by the said in this matter, and will deliver true and faithful transcripts thereof as the Court may direct.

Dated this day of 189 .

[Declared before me at the time and place above-mentioned.]

No. 7.

Notes of Public Examination where a Shorthand Writer is Appointed. [Rule 16.]

(*Title.*)

Public examination of (*a*).

Before at the Court this day of 189 .

The above-named , being sworn and examined at the time and place above-mentioned, upon the several questions following being put and propounded to him, gave the several answers thereto respectively following each question, that is to say :—

(*a*) Mr. an officer [*or as the case may be*] of the above-named company.

A.

These are the notes of the public examination referred to in the memorandum of public examination of , taken before me this day of 189 .

No. 8.

Notes of Public Examination where Shorthand Writer is not appointed. [Rule 16.]

(*Title.*)

Public examination of (*a*).

Before at the Court this day of 189 .

The above-named , being sworn and examined at the time and place above-mentioned, upon his oath saith as follows:—

(*a*) Mr. an officer [*or as the case may be*] of the above-named company.

A.

These are the notes of the public examination referred to in the memorandum of public examination of , taken before me this day of 189 .

No. 9.

Return by Taxing Officer. [Rule 28.]

In the (*a*) .

Return of Bills taxed during the year ending day of 189 .

(*a*) Name of Court.

—	The Companies Acts.			
	Number of Bills taxed.	Gross amount of Bills.	Amount disallowed on Taxation.	Net amount allowed.
Solicitors' Bills . . .				
Accountants' Bills . . .				
Auctioneers' Bills . . .				
High Bailiffs' Bills . . .				
Brokers' and other persons' Bills				
Totals . . .				

(Signed) .

Date 189 .

No. 10.

Certificate of Taxation. [Rule 27.]

(*Title.*)

I hereby certify that I have taxed the bill of costs [*or* charges] [*or* expenses] of Mr. *C.D.* [*here state capacity in which employed or engaged*] [*where necessary add* "pursuant to an order of the Court dated the day of 189 "], and have allowed the same at the sum of pounds shillings and pence [*where necessary add* "which sum is to be paid to the said *C.D.* by as directed by the said order"].

Dated this day of 189 .

Taxing Master [*or* Registrar].

£ : :

No. 11.

Register to be kept by Taxing Officer. [Rule 28.]

The Companies Acts, 1862 to 1890.

Name of Company.	Solicitors' Bills.			Auctioneers' Bills.			High Bailiffs' Bills.			Accountants' Bills.			Brokers' or other Persons' Bills.		
	Gross Amount of Bill.	Amount Taxed off.	Net Amount allowed.	Gross Amount of Bill.	Amount Taxed off.	Net Amount allowed.	Gross Amount of Bill.	Amount Taxed off.	Net Amount allowed.	Gross Amount of Bill.	Amount Taxed off.	Net Amount allowed.	Gross Amount of Bill.	Amount Taxed off.	Net Amount allowed.

No. 12.

Petition. [Rule 33.]

189 . *Here state letter and number.*]

In the (*a*)

In the matter of the Companies Acts, 1862 to 1890,

and

In the matter of the Company, Limited (*b*).

To (*c*) .

The humble petition of (*d*) showeth as follows:—

1. The Company, Limited (herein-after called the company) was in the month of , incorporated under the Companies Acts.

2. The registered office of the company is at (*e*) .

3. The nominal capital of the company is £ , divided into shares of £ each. The amount of the capital paid up or credited as paid up is £ .

4. The objects for which the company was established are as follows:—

To , and other objects set forth in the memorandum of association thereof.

[*Here set out in paragraphs the facts on which the petitioner relies, and conclude as follows*]:—

Your petitioner therefore humbly prays as follows:—

(1.) That the Company, Limited, may be wound up by the Court under the provisions of the Companies Acts, 1862 to 1890:

(2.) Or that such other order may be made in the premises as shall be just.

Note.—(*f*) It is intended to serve this petition on .

(*a*) State name of Court, and in the High Court, the Division and Judge.

(*b*) [*or as the case may be.*]

(*c*) Insert title of Court.

(*d*) Insert full name, title, &c., of petitioner.

(*e*) State the full address of the registered office so as sufficiently to show the district in which it is situate.

(*f*) This note will be unnecessary if the company is petitioner.

No. 13.

Petition by unpaid Creditor on Simple Contract. [Rule 33.]

(*Title as in No.* 12.)

Paragraphs 1, 2, 3, and 4 as in No. 12.

5. The company is indebted to your petitioner in the sum of £ for (*a*).

6. Your petitioner has made application to the company for payment of his debt, but the company has failed and neglected to pay the same or any part thereof.

7. The company is [insolvent and] unable to pay its debts.

8. In the circumstances it is just and equitable that the company should be wound up.

Your petitioner therefore, &c. [as in No. 12].

(*a*) State consideration for the debt, with particulars so as to establish that the debt claimed is due.

No. 14.

Affidavit of Service of Petition on Members, Officers, or Servants.
[Rule 35.]

(*Title.*)

In the matter of a petition dated .

I, , of , make oath and say:—

1. [*In the case of service of petition on a member, officer, or servant at the registered office, or if no registered office at the principal or last known principal place of business of the company.*]

That I did on day, the day of 189 , serve [*name and description*] a member (or officer) (or servant) of the said company with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said , at [*office or place of business as aforesaid*], before the hour of in the noon.

2. [*In the case of no member, officer, or servant of the company being found at the registered offices or place of business.*]

That I did on day, the day of 189 , having failed to find any member, officer, or servant of the above-named company at [*here state registered office or place of business*], leave there a copy of the above-mentioned petition, duly sealed with the seal of the Court, before the hour of in the noon [*add with whom such sealed copy was left, or where,* e.g. *affixed to door of offices, or placed in letter box, or otherwise.*]

3. [*In the case of directions by the Court as to the member or members of the company to be served.*]

That I did on day, the day of 189 , serve [*name or names and description*] with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said , at [*place*], before the hour of in the noon.

4. A sealed copy of the said petition is hereunto annexed.

Sworn at, &c.

No. 15,

Affidavit of Service of Petition on Liquidator. [Rule 35.]

(*Title.*)

In the matter of a petition, dated , for winding up the above company under the supervision of the Court.

I, , of , make oath and say:—

That I did, on day, the day of 189 , serve [*name and description*] the liquidator of the above-named company with a copy of the above-mentioned petition, duly sealed with the seal of the Court, by delivering the same personally to the said , at [*place*], before the hour of in the noon.

A sealed copy of the said petition is hereunto annexed.

Sworn at, &c.

No. 15A (x).

Notice of Intention to appear on Petition. [Rules, 1892, r. 20.]

In the matter of the Companies Acts, 1862 to 1890,
and
In the matter of the (a) Company.

Take Notice that *A.B.*, (b) a creditor for £ of (*or* contributory holding shares in) the above company intends to appear on the hearing of the petition advertised to be heard on the day of , 189 , and to support (*or* oppose) such petition.

(Signed) (c) *Name of person or firm.*]
[*Address*].

To

(a) Insert name of company.

(b) State full name, or if a firm, the name of the firm.

(c) To be signed by the person or his solicitor.

No. 16 (y).

Advertisement of Petition. [Rules, 1890, r. 34; 1892, r. 36.]

In the matter of the Companies Acts, 1862 to 1890,
and
In the matter of the (a) Company.

Notice is hereby given that a petition for the winding up of the above-named company by (b) the High Court of Justice (*or* the County Court of , holden at [*or, as the case may be*], was, on the day of , 189 , presented to the said Court by the said company) [*or, as the case may be*].

And that the said petition is directed to be heard before the Court sitting at , on the day of , 189 , and any creditor or contributory of the said company desirous to support or oppose the making of an order on the said petition may appear at the time of hearing by himself or (c) his counsel for that purpose; and a copy of the petition will be furnished to any creditor or contributory of the said company requiring the same by the undersigned, on payment of the regulated charge for the same.

(Signed) (d) [*Name.*]
[*Address.*]

NOTE.—Any person who intends to appear on the hearing of the said petition must serve on or send by post to the above-named, notice in writing of his intention so to do. The notice must state the name and address of the person, or, if a firm, the name and address of the firm, and must be signed by the person or firm, or his or their solicitor (if any), and must be served, or if posted, must be sent by post in sufficient time to reach the above-named not later than six o'clock in the afternoon of the of 189 .

(a) Insert name of company.

(b) If the winding up is to be subject to supervision, insert instead of "by" the words "subject to the supervision of."

(c) In the County Court add "his solicitor or."

(d) To be signed by the solicitor to the petitioner, or by the petitioner if he has no solicitor.

(x) This and the next two forms were introduced by the Rules, 1892, and are forms 2, 3 and 4 to those Rules.

(y) This form replaced the original form of the same number.

No. 16A [Rules, 1892, r. 21] (z).

List of Parties attending the Hearing of a Petition.

[*Title.*]

The following are the names of those who have given notice of their intention to attend the hearing of the petition herein, on the day of 189 .

Name.	Address.	Creditors. Amount of Debt.	Contributories. Number of Shares.	Opposing.	Supporting.

No. 17.

Affidavit verifying Petition. [Rule 36.]

(*Title.*)

I, *A.B.*, of &c., make oath and say, that such of the statements in the petition now produced and shown to me, and marked with the letter A., as relate to my own acts and deeds are true, and such of the said statements as relate to the acts and deeds of any other person or persons I believe to be true.

Sworn, &c.

No. 18.

Order for Winding up by the Court. [Rule 38.]

day of 189 .

(*Title.*)

Upon the petition of the above-named company [*or A.B.*, of &c., a creditor [*or* contributory] of the above-named company], on the day of 189 , preferred unto the Court, and upon hearing for the petitioner, and for , and upon reading the said petition, an affidavit of (the said petitioner), filed, &c., verifying the said petition, an affidavit of *L.M.*, filed the day of 189 , the *London Gazette* of the day of 189 , the newspaper of the day of [*enter any other papers*], each containing an advertisement of the said petition [*enter any other evidence*],

(z) See *ante*, p. 1491, note (x).

this Court doth order that the said Company be wound up by this Court under the provisions of the Companies Acts, 1862 to 1890, and that (a) , the Official Receiver attached to this Court be constituted provisional liquidator of the affairs of the company.

Note.—*A.B.*, being a of the company, is hereby required to attend at the office of the Official Receiver at (b).

The Official Receiver's offices are open every weekday from 10 a.m. to 4 p.m., except days, when they close at p.m.

(a) Name of Official Receiver.

(b) Insert the place at which attendance is required.

No. 19.

Order for Winding up, subject to Supervision. [Rule 38.]

day, the day of 18 .

(*Title.*)

Upon the petition, &c., this Court doth order that the voluntary winding up of the said company be continued, but subject to the supervision of this Court; and any of the proceedings under the said voluntary winding up may be adopted as the Judge shall think fit. And the creditors, contributories, and liquidators of the said company, and all other persons interested are to be at liberty to apply to the Judge at chambers as there may be occasion.

No. 19A (c).

Notification to Official Receiver of Orders pronounced on Petitions for Winding up. [Rules, 1892, r. 22.]

[*Title.*]

To the Official Receiver of the Court.

[*Address.*]

Orders pronounced this day by the Honourable Mr. Justice [*or, as the case may be*] on petitions for winding up of companies under the Companies Acts, 1862 to 1890.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.

(c) This form was introduced by the Rules, 1892, and is form 5 to those Rules.

APPENDIX VII.

Forms 19B—20.

No. 19B (*d*).

Notification to Official Receiver of Order pronounced for appointment of Official Receiver as provisional liquidator prior to Winding-up Order being made. [Rules, 1892, r. 22.]

[*Title.*]

To the Official Receiver of the Court.

[*Address.*]

Orders pronounced this day by the Honourable Mr. Justice [*or, as the case may be*] for the appointment of the Official Receiver as provisional liquidator prior to any Winding-up Order being made.

Name of Company.	Registered Office of Company.	Petitioner's Solicitor.

No. 20.

Notice of Order to Wind up [*for Local Paper*]. [Rules, 1890, r. 41.]

(*a*) Insert full title of company.

(*b*) Insert name of Court which made the order.

In the matter of the (*a*) Company.

Notice is hereby given that by an order made by the (*b*) in the above matter, dated the day of 189 , on the petition of the above-named Company [*or A.B.* of]. It was ordered that, &c. [*as in Order*].

Notice is also hereby given that the first meeting of creditors will be held at , on the day of 189 , at o'clock, and the first meeting of contributories will be held at , on the day of 189 , at o'clock.

Dated this day of 189 .

Official Receiver.

(*c*) State address of Official Receiver's officer.

NOTE.—All debts due to the company should be paid to the Official Receiver at his office at (*c*).

(*d*) This form was introduced by the Rules, 1892, and is form 6 to those Rules.

No. 21.

Order appointing the Official Receiver as provisional liquidator after presentation of Petition, and before Order to Wind up. [Rule 32.]

the day of 189 .

(*Title.*)

Upon the application, &c., and upon reading, &c., the Court doth hereby appoint Mr. , the Official Receiver attached to the Court, to be provisional liquidator of the above-named company. And the Court doth hereby limit and restrict the powers of the said Official Receiver as provisional liquidator to the following acts, that is to say [*describe the acts which the provisional liquidator is to be authorised to do and the property of which he is to take possession*] (*e*).

No. 22.

Notice to Creditors of First Meeting. [Act, 1890, 1st Sched. (2).]

(*Title.*)

(Under the order for winding up the above-named company, dated the day of 189 .)

Notice is hereby given that the first meeting of creditors in the above matter will be held at on the day of 189 , at o'clock in the noon.

To entitle you to vote thereat your proof must be lodged with me not later (*f*) than o'clock on the day of 189 .

Forms of proof and of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me not later than (*g*) o'clock on the day of 189 .

Official Receiver.
Address.

(The statement of the company's affairs (*a*) .)

(*a*) Here insert "has not been lodged," or "has been lodged, and summary is enclosed."

Note.

At the first meetings of the creditors and contributories they may amongst other things:—

1. By resolution determine whether or not an application is to be made to the Court to appoint a liquidator in place of the Official Receiver.

2. By resolution determine whether or not an application shall be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee if appointed.

Note.—If a liquidator is not appointed by the Court the Official Receiver will be the liquidator.

(*e*) See *Mercantile Bank of Australia* [1892], 2 Ch. 204.

(*f*) See Rules, 1892, r. 29.

(*g*) Ib. r. 30.

APPENDIX VII.

Forms 23—24.

No. 23.

Notice to Contributories of First Meeting. [Act, 1890, 1st Sched. (2) and Rule 46.]

(*Title.*)

Notice is hereby given that the first meeting of the contributories in the above matter will be held at on the day of 189 , at o'clock in the noon.

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged with me not later than (*h*) o'clock on the day of 189 .

Dated this day of 189 .

Official Receiver.

(The company's statement of affairs (*a*) .)

(*a*) Here insert "has not been lodged," or "has been lodged, and summary is enclosed."

Note.

At the first meetings of creditors and contributories they may amongst other things:—

1. By resolution determine whether or not an application shall be made to the Court to appoint a liquidator in place of the Official Receiver.

2. By resolution determine whether or not an application shall be made to the Court for the appointment of a committee of inspection to act with the liquidator, and who are to be the members of the committee of inspection.

Note.—If a liquidator is not appointed by the Court the Official Receiver will be the liquidator.

No. 24.

Notice to Directors and Officers of Company to attend First Meeting of Creditors or Contributories. [Rule 43.]

(*Title.*)

Take notice that the first meeting of creditors [*or* contributories] will be held on the day of 189 , at o'clock at (*a*) , and that you are required to attend thereat, and give such information as the meeting may require.

Dated this day of 189 .

To (*b*) . Official Receiver.

(*a*) Here insert place where meeting will be held.

(*b*) Insert name of person required to attend.

(*h*) Rules, 1892, r. 30.

No. 25.

Authority to Deputy to act as Chairman of Meeting and use Proxies.
[Act, 1890, 1st Sched. (5) and Rules 52 and 124.]

(*Title.*)

I, , the Official Receiver of , do hereby nominate Mr. of to be the chairman of the first meeting of creditors [*or* contributories] in the above matter, appointed to be held at on the day of 189 , and I depute him, (*a*) to attend such meeting and use, on my behalf, any proxy or proxies held by me in this matter.

Dated this day of 189 .

Official Receiver.

(*a*) *Here insert* "Being a person in my employment or under my official control, *or* being an officer of the Board of Trade."

No. 26.

Notice of Meeting [*General Form*]. [Rule 49.]

(*Title.*)

Take notice that a meeting of creditors [or contributories] in the above matter will be held at on the day of 189 , at o'clock in the noon.

Agenda.

(*a*)

Dated this day of 189 .

(Signed) (*b*)

Forms of general and special proxies are enclosed herewith. Proxies to be used at the meeting must be lodged not later than (*k*) o'clock on the day of , 189 .

(*a*) [Here insert purpose for which meeting called.]

(*b*) "Liquidator" or "Official Receiver."

No. 27.

Affidavit of Postage of Notices of Meeting. [Rule 50.]

(*Title.*)

I, , a (*a*) , make oath and say as follows:—

1. That I did on the day of 189 , send to each creditor mentioned in the company's statement of affairs, [*or* to each contributory mentioned in the register of members of the company] a notice of the time and place of the (*b*) in the form hereunto annexed marked "A."

2. That the notices for creditors were addressed to the said creditors

(*a*) State the description of the deponent.

(*b*) Insert here "general" or "adjourned general" or

(*k*) Rules, 1890, r. 123.

APPENDIX VII.

Forms 28—29.

"first" meeting of creditors [*or* contributories *as the case may be*].

respectively, according to their respective names and addresses appearing in the statement of affairs of the company.

3. That the notices for contributories were addressed to the contributories respectively according to their respective names and addresses appearing in the register of the company.

4. That I sent the said notices by putting the same prepaid into the post office at before the hour of o'clock in the noon on the said day.

Sworn, &c.

No. 28.

Certificate of Postage of Notices (General). [Rule 50.]

(*Title.*)

I, , a clerk in the office of the Official Receiver, hereby certify:—

1. That I did on the day of 189 , send to (*a*) , a notice of the time and the place of the first meeting, or (*b*) in the form hereunto annexed marked "A."

Paragraphs 2, 3, and 4 as in No. 27.

Signature

Dated .

(*a*) Each creditor mentioned in the statement of affairs, *or* each contributory mentioned in the register of members of the company, *or as the case may be.*

(*b*) "A general meeting," *or* "adjourned general meeting," *or as the case may be.*

No. 29.

Memorandum of Adjournment of First or other Meeting. [Rule 56.]

(*Title.*)

Before at on the day of 189 , at o'clock.

Memorandum.—The (*a*) meeting of (*b*) in the above matter was held at the time and place above mentioned; but it appearing that (*c*) the meeting was adjourned until the day of 189 , at o'clock in the noon, then to be held at the same place.

Chairman.

(*a*) "First" *or as the case may be.*

(*b*) Insert "creditors," or "contributories" *as the case may be.*

(*c*) Here state reason for adjournment.

No. 30.

Memorandum of Proceedings at adjourned First Meeting (No quorum).

(*Title.*)

Before at on the day of 189 , at o'clock.

Memorandum.—The adjourned meeting of (*a*) in the above matter was held at the time and place above-mentioned; but it appearing that there was not a quorum of (*a*) qualified to vote present or represented, no resolution was passed, and the meeting was not further adjourned.

Chairman.

(*a*) Insert "creditors" or "contributories" *as the case may be.*

No. 31.

List of Creditors (*a*) *assembled to be used at every Meeting.* [Rule 47.]

(*a*) Or "contributories."

(*Title.*)

Meeting held at this day of 189 .

Number.	Names of Creditors (*a*) present or represented.	Amount of Proof (*b*).		
1				
2				
3				
4				
5				
6				
7				
7	Total number of creditors (*a*) present or represented.			

(*b*) In case of contributories insert "number of shares."

No. 32.

Report of result of Meeting of Creditors or Contributories. [Rules 54, 63.]

In the matter, &c.

I, *A. B.*, the Official Receiver of the Court [*or as the case may be*] chairman of a meeting of the creditors [*or* contributories] of the above-named company, summoned by advertisement [*or* notice] dated the day of , 189 , and held on the day of , 189 , at in the county of , do hereby report to the Court the result of such meeting as follows:—

The said meeting was attended, either personally or by proxy, by creditors whose proofs of debt against the said company were admitted for voting purposes, amounting in the whole to the value of £ [*or*

APPENDIX VII.
Form 32.

by contributories, holding in the whole shares in the said company, and entitled respectively by the regulations of the company to the number of votes herein-after mentioned].

The question submitted to the said meeting was, whether the creditors [*or* contributories] of the said company wished that [*here state proposal submitted to the meeting*].

The said meeting was of opinion that the said proposal should [*or* should not] be adopted [*or* the result of the voting upon such question was as follows:]

The undermentioned creditors [*or* contributories] voted in favour of the said proposal being adopted:

Name of Creditor *or* Contributory].	Address.	Value of Debt [*or* Number of Shares].	Number of Votes conferred on each Contributory by the Regulations of the Company.

The undermentioned creditors [*or* contributories] voted against the said proposal being adopted:

Name of Creditor [*or* Contributory].	Address.	Value of Debt [*or* Number of Shares.]	Number of Votes conferred on each Contributory by the Regulations of the Company.

Dated this day of 189 .

(Signed) *H. T.*,
Chairman.

No. 33.

Statement of Affairs. [Rule, 1890, r. 58; Rules, 1892, r. 36.]

(*Title.*)

STATEMENT OF AFFAIRS on the day of 189 , the date of the Winding-up Order.

I.—*As regards Creditors.*

Gross Liabilities. £ s. d.	Liabilities.	Expected to Rank. £ s. d.	Assets.	Estimated to Produce. £ s. d.
	Debts and liabilities, viz. :—		(a.) Property as per List "H," viz. :—	
	(a.) Unsecured creditors, as per list "A" . .		(a.) Cash at bankers . .	
	(b.) Creditors fully secured [not including debenture holders] as per List "B" £ s. d.		(b.) Cash in hand . .	
	Estimated value of securities. .		(c.) Stock-in-trade [estimated cost £]	
	Estimated surplus . £		(d.) Machinery . . .	
	Carried to List "C" . .		(e.) Trade fixtures, fittings, utensils, &c. . .	
	Balance to contra . £		(f.) Investments in shares, &c.	
	(c.) Creditors partly secured as per List "C" £		(g.) Loans on mortgage .	
	Less estimated value of securities. .		(h.) Other property, viz. .	
	Estimated to rank for dividend . . .		(b.) Book debts, as per List "I," viz. :—	
	£ s. d.		Good	
	(d.) Liabilities on bills discounted other than the company's own acceptances for value, as per List "D"		£ s. d. Doubtful . Bad . £	
	Of which it is expected will rank for dividend . . .		Estimated to produce £ s. d.	
	(e.) Other liabilities, as per List "E" . .		(c.) Bills of exchange, or other similar securities on hand, as per List "J" . . .	
	Of which it is expected will rank against the assets for dividend		Estimated to produce	
			(d.) Surplus from securities in the hands of creditors fully secured (per contra)(b) . . .	
			£ s. d. (e.) Unpaid calls, as per List "K" .	
			Estimated to produce	
			Estimated total assets	
			Deduct loans on debenture bonds secured on the assets of the company as per contra (f).	
			Estimated net assets	
			Deduct preferential creditors as per contra (g) . . .	

APPENDIX VII.

Form 33—33A.

Statement of Affairs—continued.

Gross Liabilities. £ s. d.	Liabilities. £ s. d.	Expected to Rank. £ s. d.	Assets.	Estimated to Produce. £ s. d.
	(*f*.) Loans on debenture bonds as per List "F" deducted contra . £		Estimated amount available to meet unsecured creditors, subject to cost of liquidation	
	(*g*.) Preferential creditors for rates, taxes, wages, &c., as per List "G" deducted contra . £		Estimated deficiency of assets to meet liabilities of the company, subject to cost of liquidation	
	£			
	Estimated surplus (if any) after meeting liabilities of company, subject to cost of liquidation.			
	£		£	

The nominal amount of unpaid capital liable to be called up to meet the above deficiency is £ .

No. 33A [Rules, 1892, r. 36] (*l*).

II.—*As regards Contributories.*

Capital issued and allotted, viz.:— Founders Shares of £ per share Amount called up at £ per share, as per List "L" Ordinary Shares of £ per share Amount called up at £ per share, as per list "M" Preference Shares of £ per share Amount called up at £ per share, as per List "N" (Add particulars of any other capital) . . .			Estimated surplus as above (if any) subject to costs of liquidation	
£				
Less unpaid calls estimated to be irrecoverable . £				
Add deficiency to meet liabilities as above			Total deficiency as explained in Statement "O" . .	
£			£	

I, of make oath and say that the above statement and the several lists hereunto annexed marked are, to the best of my knowledge and belief, a full, true, and complete statement of the affairs of the above-named company on the day of 189 the date of the winding-up order.

Sworn at this day of 189 Before me } Signature.

(*l*) This form was substituted for the original form by the Rules, 1892, and is form 7 to those Rules.

LIST "A."

UNSECURED CREDITORS.

The names to be arranged in Alphabetical Order and numbered consecutively, Creditors for 10*l.* and upwards being placed first.

Notes.—1. When there is a contra account against the creditor, less than the amount of his claim against the company, the amount of the creditor's claim and the amount of the contra account should be shown in the third column, and the balance only be inserted under the heading "Amount of Debt," thus:—

	£	s.	d.
Total amount of claim			
Less: Contra account			

No such set-off should be included in List "I."

2. The particulars of any bills of exchange and promissory notes held by a creditor should be inserted immediately below the name and address of such creditor.

3. The names of any creditors who are also contributories, or alleged to be contributories, of the company must be shown separately and described as such at the end of the list.

No.	Name.	Address and Occupation.	Amount of Debt.			Date when Contracted.		Consideration.
						Month.	Year.	

Signature

Dated 189 .

APPENDIX VII.

Form 33.

LIST "B."

CREDITORS FULLY SECURED (NOT INCLUDING DEBENTURE HOLDERS).

No.	Name of Creditor.	Address and Occupation.	Amount of Debt.	Date when Contracted.		Consideration.	Particulars of Security.	Date when given.	Estimated Value of Security.	Estimated Surplus from Security.
				Month.	Year.					

Signature .

Dated 189 .

LIST "C."

CREDITORS PARTLY SECURED.

(State whether also Contributories of the Company.)

No.	Name of Creditor.	Address and Occupation.	Amount of Debt.	Date when Contracted.		Consideration.	Particulars of Security.	Month and Year when given.	Estimated Value of Security.	Balance of Debt unsecured.
				Month.	Year.					

Signature .

Dated 189 .

LIST "D."

LIABILITIES OF COMPANY ON BILLS DISCOUNTED OTHER THAN THEIR OWN ACCEPTANCES FOR VALUE.

No.	Acceptor's Name, Address, and Occupation.	Whether liable as Drawer or Indorser.	Date when due.	Amount.	Holder's Name, Address, and Occupation (if known).	Amount expected to rank for Dividend.

Signature .
Dated 189 .

LIST "E."

OTHER LIABILITIES.

Full Particulars of all Liabilities not otherwise Scheduled to be given here.

No.	Name of Creditor or Claimant.	Address and Occupation.	Amount of Liability or Claim.	Date when Liability incurred.		Nature of Liability.	Consideration.	Amount expected to rank against Assets for Dividend.
				Month.	Year.			

Signature .
Dated 189 .

APPENDIX VII.

Form 33.

LIST "F."

LIST OF DEBENTURE HOLDERS.

The Names to be arranged in Alphabetical Order and numbered consecutively. *Separate Lists* must be furnished of Holders of each Issue of Debentures should more than one Issue have been made.

No.	Name of Holder.	Address.	Amount.	Description of Assets over which Security extends.

Signature .
Dated 189 .

LIST "G."

PREFERENTIAL CREDITORS FOR RATES, TAXES, SALARIES, AND WAGES.

No.	Name of Creditor.	Address and Occupation.	Nature of Claim.	Period during which Claim accrued due.	Date when due.	Amount of Claim.	Amount payable in full.	Difference ranking for Dividend.

Signature .
Dated 189 .

No. 33B. [Rules, 1892, r. 36] (a).

LIST "H."

PROPERTY.

Full particulars of every description of property not included in any other lists are to be set forth in this list.

Full Statement and Nature of Property.	Estimated Cost.			Estimated to produce.			
	£	s.	d.	£	s.	d.	
(a) Cash at bankers							
(b) Cash in hand							
(c) Stock-in-trade at							
(d) Machinery at							
(e) Trade fixtures, fittings, office furniture, utensils, &c..							
(f) Investments in stocks or shares							
(g) Loans for which mortgage or other security held . .							[State particulars.]
(h) Other property, viz. :—							[State particulars.]

Signature .
Dated 189 .

LIST "I."

DEBTS DUE TO THE COMPANY.

The names to be arranged in alphabetical order, and numbered consecutively.

NOTE.—If any debtor to the Company is also a creditor, but for a less amount than his indebtedness, the gross amount due to the Company and the amount of the Contra account should be shown on the 3rd column, and the balance only be inserted under the heading "Amount of Debt," thus :—

	£	s.	d.
Due to Company	:	:	
Less : Contra account	:	:	

No such claim should be included in sheet "A."

No	Name of Debtor.	Residence and Occupation.	Amount of Debt.			Folio of Ledger or other Book where Particulars to be found.	When contracted.		Estimated to produce.	Particulars of any Securities held for Debt.
			Good.	Doubtful.	Bad.		Month.	Year.		

Signature .
Dated 189 .

(a) This form was introduced by the Rules, 1892, and superseded the original form. It is form 8 of the Rules, 1892.

APPENDIX VII.

Form 33.

LIST "J."

BILLS OF EXCHANGE, PROMISSORY NOTES, &c., ON HAND AVAILABLE AS ASSETS.

No.	Name of Acceptor of Bill or Note.	Address, &c.	Amount of Bill or Note.	Date when due.	Estimated to produce.	Particulars of any Property held as Security for Payment of Bill or Note.

Signature .
Dated 189 .

LIST "K."

UNPAID CALLS.

No. in Share Register.	Name of Shareholder.	Address and Occupation.	No. of Shares held.	Amount of Call per Share unpaid.	Total Amount due.	Estimated to realise.

Signature .
Dated 189 .

"L."

LIST OF FOUNDERS' SHARES.

Register No.	Name and Address of Shareholder.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.	Total Amount called up.

Signature .
Dated 189 .

No. 33C. [Rules, 1892, r. 36] (*b*).

"M."

LIST OF ORDINARY SHARES.

No.	Register No.	Name and Address of Shareholders.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.	Total Amount called up.

Signature .
Dated 189 .

(*b*) This form was introduced by the Rules, 1892, and superseded the original form. It is form 9 of the Rules, 1892.

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Form 33.

"N."

LIST OF PREFERENCE SHARES.

Register No.	Name and Address of Shareholder.	Nominal Amount of Share.	No. of Shares held.	Amount per Share called up.			Total Amount called up.		

Signature .

Dated 189 .

"O."

Deficiency Account.

1.) DEFICIENCY ACCOUNT WHERE WINDING UP ORDER MADE WITHIN THREE YEARS OF FORMATION OF COMPANY.

	£	s.			£	s.	d.		£	s.	d.
I. Gross profit (if any) arising from carrying on business from date of formation of company, to date of winding up order .				I. Expenses of carrying on business from date of formation of company to date of winding up order, viz. :— Salaries and wages . . . . Rent, rates, and taxes . . . Miscellaneous trade expenses . Depreciations written off in company's books . . . . . Interest on loans	£	s.	d.				
II. Deficiency as per Statement of Affairs . .				II. Bad debts (if any) as per List "I" (1) . .							
				III. Directors' fees from date of formation of company to date of winding up order . . .							
				IV. Dividends paid (if any) from date of formation of company to date of winding up order .							
				V. Losses on investments realised, from date of formation of company to date of winding up order, exclusive of depreciation written off as above, viz :—(4)							
				VI. Depreciation on property not written off in company's books, viz. :—(4) . . .							
				VII. Other losses and expenses (if any) (2) from date of formation of company, to date of winding up order, viz. :—(4)							
				VIII. Unpaid calls as per List "K" *Less* amount taken credit for in front sheet as estimated to be realised therefrom . } Do.	£	s.	d				
				Balance estimated as irrecoverable . . .							
Total amount to be accounted for (3) £				Total amount accounted for . (3) £							

NOTES—(1) This List must show when debts were contracted.
(2) Here add particulars of other losses or expenses (if any) and liabilities (if any) for which no consideration received.
(3) These figures should agree.
(4) Where particulars are numerous they should be inserted in a separate schedule.

Signature .

Dated 189 .

O—*continued.*

Deficiency Account.

(2.) DEFICIENCY ACCOUNT WHERE WINDING UP ORDER MADE MORE THAN THREE YEARS AFTER FORMATION OF THE COMPANY.

	£	s.	d.		£	s.	d.
I. Excess of assets over capital and liabilities on the (1) day of 18 (if any), as per company's balance sheet .				I. Excess of capital and liabilities over assets on the (1) day of 18 , (if any) as per company's balance sheet			
II. Gross profit (if any) arising from carrying on business from the (1) day of 18				II. Expenses of carrying on business from the (1) day of 18 , viz. :—			
				Salaries and wages	£ s. d.		
				Rent, rates, and taxes			
				Miscellaneous trade expenses . .			
				Depreciations written off in company's books			
				Interest on loans			
III. Deficiency as per Statement of affairs . .				III. Bad debts (if any) as per List "I" (2) . . .			
				IV. Directors' fees from the (1) day of 18			
				V. Dividends paid (if any) since the (1) day of 18			
				VI. Losses on investments realised since the (1) day of 18 exclusive of depreciation written off as above, viz. :—(4) . . .			
				VII. Depreciation on property not written off in company's books, viz. :—(4)			
				VIII. Other losses and expenses (if any) (3) since the (1) day of 18 , viz. :—			
				IX. Unpaid calls, as per List "K" . .	£ s. d.		
				Less amount taken credit for in front sheet as estimated to be realised therefrom			
				Balance estimated as irrecoverable . . .			
Total amount to be accounted for (5) £				Total amount accounted for . (5) £			

NOTES.—(1) Three years before date of winding up order.
(2) This list must show when debts were contracted.
(3) Here add particulars of other losses or expenses (if any) and liabilities (if any) for which no consideration received.
(4) Where particulars are numerous they should be inserted in a separate schedule.
(5) These figures should agree.

Signature .
Dated 189 .

No. 34.

Order appointing Liquidator. [Rules, 1890, r. 63.]

(*Title.*)

Upon the application of , the Official Receiver of the Court, and upon reading the report of the result of the meetings of creditors and contributories held respectively on the day of , 189 , and on the day of 189 , and upon hearing, &c., it is hereby ordered that of be appointed liquidator of the above-named company.

APPENDIX VII.
Forms 34—37.

[*If a committee of inspection is also appointed, add*
And it is further ordered that the following persons be appointed a committee of inspection to act with the liquidator.]

And it is ordered that the said liquidator do within days from the date of this Order give security to the satisfaction of the Board of Trade in the manner provided by the Companies (Winding Up) Rules, 1890.

Dated the day of 189 .

No. 35.

Certificate that Liquidator or Special Manager has given Security. [Rule 67.]

(*Title.*)

This is to certify that *A.B.*, of , who was on the day of , 189 , appointed liquidator [*or* special manager] of the above-named company, has duly given security to the satisfaction of the Board of Trade.

Dated this day of 189 .

By the Board of Trade,
(Signed) *J.S.*

No. 36.

Advertisement of Appointment of Liquidator. [Rule 64.]

In the matter, &c.

By order of the , dated the day of 189 , Mr. of has been appointed liquidator of the above-named company with [*or* without] a committee of inspection.

Dated this day of 189 .

No. 37.

Order directing a Public Examination. [Rule 72.]

(*Title.*)

Upon the application of the Official Receiver in the above matter, and upon reading the report of the Official Receiver made to the Court on the day of 189 , and [*as the case may be*] and it appearing , it is ordered that [*state name of person*] attend before the (*a*) on a day to be named for the purpose and be publicly examined as to the promotion or formation of the company, and as to the conduct of the business of the company, and as to his conduct and dealings as director [*or* officer] of the Company [*or, as the case may be*].

Dated the day of 189 .

(*a*) State the judge or officer before whom the examination is to be held.

No. 38.

Order appointing a Time for Public Examination. [Rule 74.]

(*Title.*)

Upon the application of the Official Receiver, in the above matter, it is ordered that the public examination of , who by the order of was directed to attend before to be publicly examined , be held at (*a*) on the day of 189 at o'clock in the

And it is ordered that the above-named do attend at the place and time above mentioned.

Dated this day of 189 .

NOTE.—Notice is hereby given that if you, the above-named fail, without reasonable excuse, to attend at the time and place aforesaid you will be liable to be committed to prison without further notice.

(*a*) Insert the place for the examination.

No. 38A (*c*).

Notice to attend Public Examination. [Rules, 1892, r. 36.]

(*Title.*)

Whereas by an Order of this Court, made on the day of 189 , it was ordered that you the under-mentioned should attend before the Registrar (*a*) on a day to be named for the purpose, and to be publicly examined as to the promotion or formation of the company, and as to the conduct of the business of the company, and as to your conduct and dealings as (*b*).

And whereas the day of 189 , at o'clock in the noon, before the Registrar sitting at has been appointed as the time and place for holding the said examination.

Notice is hereby given that you are required to attend at the said time and place, and at any adjournments of the examination which may be ordered, and to bring with you and produce all books, papers, and writings, and other documents in your custody or power in any wise relating to the above-named company.

And take notice that if you fail, without reasonable excuse, to attend at such time and place and at the adjournments of the said public examination which may be ordered, you will be liable to be committed to prison without further notice.

Dated the day of 189 .

Official Receiver.

To [*Name*]
[*Address*]

(*a*) Or, as the case may be.

(*b*) Insert "Director" or "Officer" or, as the case may be.

(*c*) This form was introduced by the Rules, 1892; it is form 10 of those Rules.

APPENDIX VII.

Forms 39—41.

No. 39.

Report to the Court where Person examined refuses to answer to Satisfaction of Registrar or Officer. [Rules, 1890, r. 17.]

(*Title.*)

At the [public] examination of (*a*) held before me this day of 189 , the following question was allowed by me to be put to the said [ ].

Q. (*b*)

The (*c*) refused to answer the said question.

(*or*) The (*c*) answered the said question as follows:—

A. (*d*)

I thereupon named the day of 189 , at as the time and place for such [refusal to] answer to be reported to the Hon. Mr. Justice [*or* His Honour Judge].

Dated this day of 189 .

Registrar.
[*or as the case may be.*]

(*a*) *e.g.*, *A.B.*, a person ordered to attend for examination.
(*b*) Here state question.
(*c*) Witness.
(*d*) Here insert answers (if any).

No. 40.

Order of Court that Examination is concluded. [Rule 77.]

(*Title.*)

Whereas the above-named *A.B.* has duly attended before , and has been publicly examined as to the promotion and formation of the company [*or as the case may be*].

And whereas is of opinion that the said *A.B.* has sufficiently answered the questions put to him, it is hereby ordered that the examination of the said *A.B.* is concluded.

Dated this day of 189 .

No. 41.

Warrant against Person who fails to attend Examination. [Rule 76.]

(*Title.*)

To *X.Y.*, the officer of this Court [*or where warrant issues from a county court*, to the high bailiff and others the bailiffs of the said Court] and all peace officers within the jurisdiction of the said Court, and to the governor or keeper of the [*here insert the prison*].

Whereas by evidence taken upon oath, it hath been made to appear to the satisfaction of the Court that by order of the Court, dated the day of 189 , and directed to (*a*) , he was directed to attend personally at the (*b*) , and be examined before (*c*) , which order was afterwards, as hath been duly proved on oath, duly served upon the said (*a*) [*or*, that there is probable reason to suspect and believe that the said (*a*) , has absconded and gone abroad [*or* quitted his place of residence, *or*] is about to go abroad [*or* quit his place of residence] with a view of avoiding examination under the Companies (Winding-up) Act, 1890].

(*a*) Name of person required to attend.
(*b*) Place of examination.
(*c*) Name or title of officer before whom examination is directed to be held.

And whereas the said (a) did without good cause fail to attend on the day of 189 , for the purpose of being examined, according to the requirements of the said order of this Court made on the day of 189 , directing him so to attend.

These are therefore to require you the said [*or* high bailiff, bailiffs, and others] to take the said (a) and to deliver him to the governor or keeper of the above-named prison, and you the said governor or keeper to receive the said (a) , and him safely to keep in the said prison until such time as this Court may order.

Dated this day of , 189 .

No. 41A (d).

Warrant to Registrar of Court in whose District a Person against whom a Warrant of Arrest has been issued is believed to be. [Rules 20 F.]

Whereas the warrant of arrest hereto annexed has been issued by this Court against the person named therein, namely,
of under the provisions of the Companies Acts and Companies (Winding-up) Rules.

And whereas he is outside the ordinary jurisdiction of this Court, and is believed to be within the jurisdiction or district of the Court of which you are the registrar.

These are therefore to require you to cause the said warrant to be executed within the ordinary jurisdiction of the Court (a).

Dated this day of , 19 .

(Signed) (b)

To the Registrar of the Court.

(a) Insert name of Court.

(b) To be signed by the High Bailiff or other proper Officer of the Court.

No. 41B (e).

Endorsement of Warrant of Arrest issued by a Court to which the same has been sent for execution by the Court which originally issued it. [Rule 20 F.]

To the governor of the prison at (a)

Take notice that in accordance with the Companies (Winding-up) Rules, 1899, this warrant of arrest has been sent to and issued by me to the high bailiff (or other officer) of this Court, and that the person named in the warrant, if apprehended within the jurisdiction thereof, is to be conveyed to the prison of this Court, and is to be there kept until otherwise directed by the order of the Court which originally issued the warrant of arrest, or until discharged by that Court, or otherwise by law.

Dated the day of , 19 .

Registrar.

(a) Insert name of prison of the Court to which the warrant has been sent.

No. 42.

Summons for Persons to attend at Chambers to be examined. [Rule 78.]

(*Title.*)

A.B. of &c., and *E.F.* of &c., are hereby severally summoned to attend at (a), in the county of on the day of 189 , at of the clock of the day of 189 , at of the clock in the noon, to be examined on the part

(a) State place of examination.

(d) This and the next form were introduced by Rules, 1899; this form is form 1 of those Rules.

(e) Form 2 of Rules, 1899.

APPENDIX VII.
Forms 42—45.

of the official receiver [*or* the liquidator] for the purpose of proceedings directed by the Court to be taken in the above matter. [And the said *A.B.* is hereby required to bring with him and produce, at the time and place aforesaid, a certain indenture [*describe documents*], and all other books, papers, deeds, writings, and other documents in his custody or power in anywise relating to the above-named company.

Dated this day of 189 .

This summons was taken out by *Messrs. C.* and *D.*, of , in the county of , solicitors for .

No. 43.

Application to Board of Trade to authorise a special Bank Account.
[Rule 82.]

(*Title.*)

We, the committee of inspection, being of opinion that Mr. of , the liquidator in the above matter, should have a special bank account for the purpose of (*a*) hereby apply to the Board of Trade to authorise him to make his payments into and out of the bank.

(*a*) Here insert grounds of application.

All cheques to be countersigned by , a member of the committee of inspection, and by for .

Dated this day of 189 .

_____
_____ } Committee of Inspection.
_____

No. 44.

Order of Board of Trade for special Bank Account. [Rule 82.]

(*Title.*)

You are hereby authorised to make your payments in the above matter into, and out of, the bank.

[*Here insert any special terms.*]

All cheques to be countersigned by , a member of the committee of inspection, and by .

Dated this day of 189 .

By order of the Board of Trade.

To

Liquidator.

No. 45.

List of Contributories to be made out by Liquidator. [Rule 83.]

(*Title.*)

The following is a list of the contributories of the said company, made out by me from the books and papers of the said company, together with their respective addresses and the number of shares [*or* extent of interest] to be attributed to each, so far as I have been able to make out or ascertain the same.

In the first part of the list the persons who are contributories in their own right are distinguished.

In the second part of the said list the persons who are contributories as being representatives of, or being liable to the debts of others, are distinguished.

First Part.—Contributories in their own Right.

Serial No.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or* extent of Interest].

Second Part.—Contributories as being Representatives of, or liable to the Debts of others.

Serial No.	Name.	Address	Description.	In what Character included.	Number of Shares [*or* extent of Interest].

No. 46.

Notice to Contributories of Appointment to settle List of Contributories.
[Rule 84.]

(*Title.*)

Take notice that I, , the liquidator of the above-named company, have appointed the day of 189 , at of the clock in the noon, at (*a*) , in the county of , to settle the list of the contributories of the above-named company, made out by me, pursuant to the Companies Acts, 1862 to 1890, and the rules thereunder, and that you are included in such list in the character and for the number of shares [*or* extent of interest] stated below; and if no sufficient

(*a*) Insert place of appointment.

APPENDIX VII. Forms 46—47.

cause is shown by you to the contrary at the time and place aforesaid, the list will be settled, including you therein.

Dated this day of 189 .

Liquidator.

To Mr. *A.B.* [and to Mr. *C.D.*, his solicitor.]

No. on List.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or* extent of Interest].

No. 47.

Certificate of Liquidator of final Settlement of the List of Contributories.
[Rule 85.]

(*Title.*)

Pursuant to the Companies Acts, 1862 to 1890, and to the rules made thereunder, I, the undersigned, being the liquidator of the above-named company, hereby certify that the result of the settlement of the list of contributories of the above-named company, so far as the said list has been settled, up to the date of this certificate, is as follows:—

1. The several persons whose names are set forth in the second column of the First Schedule hereto have been included in the said list of contributories as contributories of the said company in respect of the number of shares [*or* extent of interest] set opposite the names of such contributories respectively in the said schedule.

I have, in the first part of the said schedule, distinguished such of the said several persons included in the said list as are contributories in their own right.

I have, in the second part of the said schedule, distinguished such of the said several persons included in the said list as are contributories as being representatives of or being liable to the debts of others.

2. The several persons whose names are set forth in the second column of the Second Schedule hereto have been excluded from the said list of contributories.

3. I have, in the seventh column of the said First and Second Schedules, set forth opposite the name of each of the several persons respectively the date when such person was included in or excluded from the said list of contributories.

4. Before settling the said list, I was satisfied by the affidavit of W. S. , clerk to , duly filed with the proceedings

herein, that notice was duly sent by post to each of the persons mentioned in the said list informing him that he was included in each list in the character and for the number of shares [*or* extent of interest] stated therein, and of the day appointed for finally settling the said list.

THE FIRST SCHEDULE above referred to.

First Part.—Contributories in their own Right.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or* extent of Interest].	Date when included in the List.

Second Part.—Contributories as being Representatives of or liable to the Debts of Others.

Serial No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or* extent of Interest].	Date when included in the List.

THE SECOND SCHEDULE above referred to.

Serial No. in List.	Name.	Address.	Description.	In what Character proposed to be included.	Number of Shares [*or* extent of Interest].	Date when excluded from the List.

Dated this day of 189 .

(Signed)

Liquidator.

APPENDIX VII.

Forms 48—49.

No. 48.

Notice to Contributory of final Settlement of List of Contributories, and that his Name is included. [Rule 86.]

(*Title.*)

Take notice that I, , the liquidator of the above-named company, have, by certificate, dated the day of 189 , under my hand, finally settled the list of contributories of the said company, and that you are included in such list in the character and for the number of shares [*or* extent of interest] stated below.

Any application by you to vary the said list of contributories, or that your name may be excluded therefrom, must be made by you to the Court within 21 days from the service on you of this notice, or the same will not be entertained.

(*a*) State address.

The said list may be inspected by you at my office at (*a*) on any day between the hours of and .

Dated this day of 189 .

(Signed)

Liquidator.

To Mr.
[*or* to Mr.
his solicitor].

No. in List.	Name.	Address.	Description.	In what Character included.	Number of Shares [*or* extent of Interest].

No. 49.

Supplemental List of Contributories. [Rule 88.]

(*Title.*)

The following is a list of persons who, since making out the list of contributories herein, dated the day of 189 , I have ascertained are, or have been, holders of shares in [*or* members of] the above-named company, and to the best of my judgment are contributories of the said company.

2. The said supplemental list contains the names of such persons,

together with their respective addresses and the number of shares [*or* extent of interest] to be attributed to each.

3. In the first part of the said list such of the said persons as are contributories in their own right are distinguished.

4. In the second part of the said list such of the said persons as are contributories as being representatives of, or being liable to the debts of others, are distinguished.

[*The supplemental list is to be made out in the same form as the original list.*]

No. 50.

Affidavit of Service of Notice to Contributory. [Rule 86.]

(*Title.*)

I, *W.S.*, of &c., clerk to , make oath and say as follows:—

1. The first six columns of the schedule now produced and shown to me, and marked with the letter A., contain a true copy of the list of contributories of the said company, made out by the liquidator of the company on the day of 189 , and now on the file of proceedings of the said company, as I know from having on the day of 189 , examined and compared the said schedule with the said list.

2. I did on the day of 189 , in the manner hereinafter mentioned, serve a true copy of the notice now produced and shown to me and marked B., upon each of the respective persons whose names, addresses, and descriptions appear in the second, third, and fourth columns of the said schedule marked A., except that in the tabular form at the foot of such copies respectively I inserted the number on list, name, address, description, in what character included, and number of shares [*or* extent of interest] of the person on whom such copy of the said notice was served, in the same words and figures as the same particulars are set forth in the said schedule marked A.

3. I served the said respective copies of the said notice, by putting such copies respectively, duly addressed to such persons respectively, according to their respective names and addresses appearing in the said schedule marked A., and with the proper postage stamps affixed thereto, as prepaid letters into the Post Office Receiving House, No. , in street, in the county of , between the hours of and of the clock, in the noon of the said day of 189 .

Sworn, &c.

No. 51.

The Schedule referred to in Form No. 50.

A.

This schedule marked A., was produced and shown to *W.S.*, and is the same schedule as is referred to in his affidavit sworn before me this day of 189 .

W.B., &c.

1. Number on List.	2. Name.	3. Address.	4. Description.	5. In what Character included.	6. Number of Shares [*or* extent of Interest].

No. 52.

Order on Application to vary List of Contributories. [Rule 88.]

(*Title.*)

Upon the application of *W.N.* to review or vary the list of contributories of the said company in respect of the inclusion of the said *W.N.* therein, and that his name may be excluded therefrom, [*or as the case may be*], and upon hearing, &c., and upon reading, &c., It is Ordered, That the name of the said *W.N.* be excluded from the said list of contributories, *or* may be included in the said list of contributories for shares, [*or as the case may be*] [*or* the Court doth not think fit to make any order on the said application, except that the said *W.N.* do pay to the liquidator of the said company his costs of this application, to be taxed by in case the parties differ].

No. 53.

Notice by Liquidator requiring Payment of Money or Delivery of Books, &c., to Liquidator. [Rule 91.]

(*Title.*)

(*a*) Name of liquidator.

Take notice that I, the undersigned (*a*) , have been appointed liquidator of the above-named company, and that you, the under-mentioned

(b) , are required, within days after service hereof, to pay to me [*or* deliver, convey, surrender, or transfer to or into my hands] as liquidator of the said company at my office, situate at (c) , &c. the sum of £ , being the amount of debt appearing to be due from you on your account with the said company [*or* any sum or balance, books, papers, estate, or effects], [*or specifically describe the property*] now being in your hands, and to which the said company is entitled [*or otherwise as the case may be*].

Dated this day of 189 .

(Signed)

Liquidator.

To (b)
(*Address*)

APPENDIX VII.
Forms 53—54.
(b) Name of person to whom notice is addressed.
(c) Address of liquidator's office.

No. 54.

Notice to each Member of Committee of Inspection of Meeting for Sanction to proposed Call. [Rule 92.]

(*Title.*)

Take notice that a meeting of the committee of inspection of the above company will be held at on the (a) day of 189 , at o'clock in the noon, for the purpose of considering and obtaining the sanction of the committee to a call of £ per share proposed to be made by the liquidator on the contributories.

Annexed hereto is a statement showing the necessity for the proposed call and the amount required.

Dated this day of 189 .

(Signed)

Liquidator.

(a) To be a date not less than seven days from the date when the notice will in course of post reach the person to whom it is addressed.

STATEMENT.

1. The amount due in respect of proofs admitted against the company, and the estimated amount of the costs, charges, and expenses of the winding up, form in the aggregate the sum of £ or thereabouts.

2. The assets of the company amount in value to the sum of £ . There are no other assets, except the amounts due from certain of the contributories to the company, and in my opinion it will not be possible to realise in respect of the said amounts more than £ .

3. The list of contributories has been duly settled, and persons have been settled on the list in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the company, and of paying the costs, charges, and expenses of the winding up, I estimate that a sum of £ will be required in addition to the amount of the company's assets herein-before mentioned.

5. In order to provide the said sum of £ it is necessary to make a call on the contributories, and having regard to the probability that some of them will partly or wholly fail to pay the amount of the call, I estimate that for the purpose of realising the amount required it is necessary that a call of £ per share should be made.

(*Annex tabular statement showing amounts of debts, costs, &c., and of assets.*)

No. 55 (*f*).

Advertisement of Meeting of Committee of Inspection. [Rule 92.]

In the matter of, &c.

Notice is hereby given that the undersigned liquidator of the above-named company proposes that a call should be made on all the contributories of the said company (*or as the case may be*) of £ per share, and that he has summoned a meeting of the committee of inspection of the company to be held at on the day of , 189 , at o'clock in the noon, to obtain their sanction to the proposed call.

Each contributory may attend the meeting and be heard, or make any communication in writing to the liquidator or the members of the committee of inspection to be laid before the meeting, in reference to the intended call.

A statement showing the necessity of the proposed call and the purpose for which it is intended may be obtained on application to the liquidator at his office at (*a*)

(*a*) Insert address.

(Signed)
Liquidator.

Dated this day of , 189 .

No. 56.

Resolution of Committee of Inspection sanctioning Call. [Rule 92.]

Resolved, that a call of £ per share be made by the liquidator on all the contributories of the company [*or as the case may be*].

(Signed)
Members of the Committee of Inspection.

Dated this day of 189 .

No. 57.

Notice of Calls sanctioned by Committee of Inspection to be sent to Contributory. [Rule 94.]

In the matter, &c.

Take notice that the committee of inspection in the winding up of this company have sanctioned a call of £ per share on all the contributories of the company.

The amount due from you in respect of the call is the sum of £ . This sum should be paid by you direct to me at my office (*a*) on or before the day of 189 .

(*a*) State address.

Dated this day of 189 .

Liquidator.

To Mr.

(*f*) Printed as altered by an Order of the Board of Trade, dated 31st January, 1894, and made under Rules, 1890, r. 3 (2).

No. 58 (*g*).

Form of Summons (General). [Rules, 1892, r. 36.]

In the High Court of Justice.

Companies Winding-up.

MR. JUSTICE VAUGHAN WILLIAMS (*gg*).

In the matter of the Companies Acts, 1862 to 1890,

and

In the matter (*a*)

Let (*b*) attend at the office of the Registrar at the Bankruptcy Buildings, Carey Street, London, on the day of 189 , at o'clock in the noon, on the hearing of an application of (*c*) for an order that (*d*)

Dated the day of 189 .

Seal.

This summons was taken out by of , solicitors for .

NOTE.—If you do not attend, either in person or by your solicitor, at the time and place above-mentioned, such order will be made, and proceedings taken as the Judge (or Registrar) may think just and expedient.

(*a*) Insert name of company.

(*b*) Name of respondent.

(*c*) Name and description of applicant.

(*d*) State object of application.

No. 59.

Affidavit of Liquidator in support of Proposal for Call. [Rule 93.]

(*Title.*)

I, of, &c., the liquidator of the above-named company, make oath and say as follows:—

1. I have in the schedule now produced and shown to me, and marked with the letter A., set forth a statement showing the amount due in respect of the debts proved and admitted against the said company, and the estimated amount of the costs, charges, and expenses of and incidental to the winding up the affairs thereof, and which several amounts form in the aggregate the sum of £ or thereabouts.

2. I have also in the said schedule set forth a statement of the assets in hand belonging to the said company, amounting to the sum of £ and no more. There are no other assets belonging to the said company, except the amounts due from certain of the contributories of the said company, and, to the best of my information and belief, it will be impossible to realise in respect of the said amounts more than the sum of £ or thereabouts.

3. persons have been settled by me on the list of contributories of the said company in respect of the total number of shares.

4. For the purpose of satisfying the several debts and liabilities of the said company, and of paying the costs, charges, and expenses of and incidental to the winding up the affairs thereof, I believe the sum of £ will be required in addition to the amount of the assets of the said company mentioned in the said Schedule A. and the said sum of £ .

(*g*) This form was substituted by the Rules, 1892, for an earlier form, which was a form of summons for intended call. It is form 11 of the Rules, 1892.

(*gg*) See form 1, *ante*, p. 1485, and the note thereto.

APPENDIX VII.

Forms 59—62.

5. In order to provide the said sum of £ , it is necessary to make a call upon the several persons who have been settled on the list of contributories as before mentioned, and, having regard to the probability that some of such contributories will partly or wholly fail to pay the amount of such call, I believe that for the purpose of realising the amount required as before-mentioned, it is necessary that a call of £ per share should be made.

Sworn, &c.

No. 60.

Advertisement of Intended Call. [Rule 93.]

In the matter of .

(a) Name of Court.

(b) State place of appointment.

Notice is hereby given that the (a) Court has appointed the day of 189 , at o'clock in the noon, at (b) , to sanction a call on all the contributories of the said company [*or as the case may be*], and that the liquidator of the said company proposes that such call shall be for £ per share. All persons interested are entitled to attend at such day, hour, and place, to offer objections to such call.

Dated this day of 189 .

G.H.,
Liquidator.

No. 61.

Order sanctioning a Call. [Rule 93.]

The day of 189 .

(*Title.*)

Upon the application of the liquidator of the above-named company, and upon reading the affidavit of the said liquidator, filed 189 , and the exhibit marked A. therein referred to, and an affidavit of , filed 189 , it is ordered that leave be given to the liquidator to make a call of £ per share on all the contributories of the said company [*or as the case may be*]. And it is ordered that each such contributory do, on or before the day of , 189 , pay to the liquidator of the company the amount which will be due from him or her in respect of such call.

No. 62.

Notice to be served with the Order sanctioning a Call. [Rule 94.]

In the Matter, &c.

The amount due from you, *A.B.*, in respect of the call made pursuant to leave given by the above [*or* within] order is the sum of £ , which sum is to be paid by you to me as the liquidator of the said company at my office, No. Street, in the county of .

Dated this day of 189 .

To Mr. *A.B.*

G.H.,
Liquidator.

No. 63.

Affidavit in support of Application for Order for Payment of Call due from Contributories. [Rule 95.]

(*Title.*)

I, of, &c., the liquidator of the above-named company, make oath and say as follows:—

1. None of the contributories of the said company, whose names are set forth in the schedule hereunto annexed, marked A., have paid or caused to be paid the sums set opposite their respective names in the said schedule, which sums are the amounts now due from them respectively under the call of £ per share, duly made under the Companies Acts, 1862 to 1890, dated the day of , 189 .

2. The amounts or sums set opposite the names of such contributories respectively in such schedule are the true amounts due and owing by such contributories respectively under the said call.

Sworn, &c.

A

THE SCHEDULE ABOVE REFERRED TO.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					£ s. d.

Note.—In addition to the above affidavit, an affidavit of the service of the application for the call will be required.

No. 64.

Order for Payment of Call due from a Contributory. [Rule 95.]

The day of , 189 .

(*Title.*)

Upon the application of the liquidator of the above-named company, and upon reading an affidavit of , filed the day of , 189 , and an affidavit of the liquidator, filed the day of , 189 , it is ordered, that *C.D.*, of, &c. [*or E.F.*, of, &c., the legal personal representative of *L.M.*, late of, &c., deceased], one of the contributories of the said company [*or, if against several contributories,*

APPENDIX VII. Forms 64—65.

the several persons named in the second column of the schedule to this order, being respectively contributories of the said company], do, on or before the day of , 189 , or within four days after service of this order, pay to the liquidator of the said company at his office, No. Street, in the county of , the sum of £ , [*if against a legal personal representative add*, out of the assets of the said *L.M.*, deceased, in his hands as such legal personal representative as aforesaid, to be administered in a due course of administration, if the said *E.F.* has in his hands so much to be administered, *or*, *if against several contributories*, the several sums of money set opposite to the respective names in the sixth column of the said schedule hereto], such sum [*or* sums] being the amount [*or* amounts] due from the said *C.D.* [*or* *L.M.*], *or* the said several persons respectively], in respect of the call of £ per share duly made, dated the day of , 189 .

THE SCHEDULE REFERRED TO IN THE FOREGOING ORDER.

No. on List.	Name.	Address.	Description.	In what Character included.	Amount due.
					£ s. d.

Note.—The copy for service of the above order must be indorsed as follows:—

"If you, the under-mentioned *A.B.*, neglect to obey this order by the time mentioned therein you will be liable to process of execution."

No. 65.

Affidavit of Service of Order for Payment of Call. [Rule 95.]

(*Title.*)

I, *J.B.*, of, &c., make oath and say as follows:—

1. I did on the day of , 189 , personally serve *G.F.*, of , in the county of , &c. with an order made in this matter by this court, dated the day of , 189 , whereby it was ordered [*set out the order*] by delivering to and leaving with, the said *G.F.*, at , in the county of , a true copy of the said order, and at the same time producing and showing unto him, the said *G.F.*, the said original order.

2. There was indorsed on the said copy when so served the following words, that is to say, "If you, the under-mentioned *G.F.*, neglect to obey this order by the time mentioned therein, you will be liable to process of execution."

Sworn, &c.

No. 66 (*h*).

Proof of Debt.—General Form. [Rule 99 and Rules, 1892, r. 36.]

(*Title.*)

I (*a*) of in the county of , make oath and say:—

(*b*) That I am in the employ of the under-mentioned creditor, and that I am duly authorised by to make this affidavit, and that it is within my own knowledge that the debt herein-after deposed to was incurred and for the consideration stated, and that such debt, to the best of my knowledge and belief, still remains unpaid and unsatisfied.

(*c*) That I am duly authorised, under the seal of the company herein-after named, to make the proof of debt on its behalf.

1. That the above-named company was, at the date of the order for winding up the same, viz., the day of 189 , and still is justly and truly indebted to (*d*) in the sum of pounds shillings and pence for (*e*) as shown by the account endorsed hereon, *or* by the following account, viz.:—

for which sum or any part thereof I say that I have not nor hath (*f*) or any person by (*g*) order to my knowledge or belief for (*g*) use had or received any manner of satisfaction or security whatsoever, save and except the following (*h*):—

You should attend carefully to these directions.

(*a*) Fill in full name, address, and occupation of deponent. If proof made by creditor, strike out clauses (*b*) and (*c*). If made by clerk of creditor strike out (*c*). If by clerk or agent of company strike out (*b*).

(*d*) Insert me and to *C.D.* and *E.F.*, my co-partners in trade, if any, or, if by clerk or agent insert name, address, and description of principal.

Date.	Drawer.	Acceptor.	Amount.	Due Date.

Admitted to vote for

£ : :

the day of 189 .

Official Receiver or Liquidator.

—

Admitted to rank for dividend for

£ : :

this day of 189 .

Official Receiver or Liquidator.

Sworn at in the county of , this day of 189 . Before me

[*Deponent's Signature.*]

The proof cannot be admitted for voting at the first meeting unless it is properly completed and lodged with the Official Receiver before the time named in the notice convening such meeting.

Note this.

(*e*) State consideration [as goods sold and delivered by me (and my said partner) to the company between the dates of] [or monies advanced by me in respect of the under-mentioned bill of exchange], or as the case may be].

(*f*) "My said partners or any of them" *or* "the above-named creditor" [as the case may be].

(*g*) "My," *or* "our," *or* "their," *or* "his" (as the case may be).

(*h*) [Here state the particulars of all securities held, and where the securities are on the property of the company assess the value of the same, and if any bills or other negotiable securities be held specify them in the schedule.]

(*h*) This form was substituted by the Rules, 1892, for an earlier form; it is form 12 of those Rules.

APPENDIX VII.

Forms 67—68.

No. 67.

Proof of Debt of Workmen. [Rule 107.]

(*Title.*)

(*a*) Fill in full name, address, and occupation of deponent.

(*b*) On behalf of the workmen and others employed by the above-named company.

I (*a*) of (*b*) make oath and say :—

1. That the above-named company was on the day of 189 , and still is justly and truly indebted to the several persons whose names, addresses, and descriptions appear in the schedule endorsed hereon in sums severally set against their names in the sixth column of such schedule for wages due to them respectively as workmen or others in the employ of the company in respect of services rendered by them respectively to the company during such periods as are set out against their respective names in the fifth column of such schedule, for which said sums, or any part thereof, I say that they have not, nor hath any of them had or received any manner of satisfaction or security whatsoever.

Sworn at , in the county of , this day of , 189 . Before me

Deponent's Signature

SCHEDULE referred to on the other side.

1. No.	2. Full Name of Workman.	3. Address.	4. Description.	5. Period over which Wages due.	6. Amount due.		
					£	s.	d.

Signature of Deponent

No. 68.

Notice of Rejection of Proof of Debt. [Rule 110.]

(*Title.*)

(*a*) If proof wholly rejected strike out words underlined

Take notice, that, as Official Receiver of the above-named company, I have this day rejected your claim against the company (*a*) [to the extent of £] on the following grounds :—

And further take notice that subject to the power of the Court to extend the time, no application to reverse or vary my decision in rejecting your proof will be entertained after the expiration of (*b*) days from this date.

Dated this day of 189 .

Signature

Address

To Official Receiver.

APPENDIX VII.

Forms 68—70.

(*b*) 21 days or 7 days as the case may be. See Rules 111 and 112.

No. 69.

Notice to Creditors of Intention to declare Dividend. [Rule 122.]

(*Title.*)

A (*a*) dividend is intended to be declared in the above matter. You are mentioned in the statement of affairs, but you have not yet proved your debt.

If you do not prove your debt by the day of 189 , you will be excluded from this dividend.

Dated this day of 189 .

G.H., Liquidator.

To *X.Y.* [Address.]

(*a*) Insert here "first" *or* "second," *or* "final," *or as the case may be.*

No. 70.

Notice to Persons claiming to be Creditors of Intention to declare Final Dividend. [Rule 122.]

(*Title.*)

Take notice that a final dividend is intended to be declared in the above matter, and that if you do not establish your claim to the satisfaction of the Court on or before the day of 189 , or such later day as the Court may fix, your claim will be expunged, and I shall proceed to make a final dividend without regard to such claim.

Dated this day of 189 .

G.H., Liquidator.

To *X.Y.* [Address.]

APPENDIX VII.

Form 71.

No. 71.

Statement to accompany Notice of Application for Release. [Rule 148.]

(*Title.*)

Statement showing position of company at date of application for release.

Dr.

	Estimated to produce per company's statement. £ s. d.	Receipts £ s. d.
To total receipts from date of winding up order, viz.:— (*State particulars under the several headings specified in the Statement of Affairs.*) Receipts per trading account		
Other receipts		
Total		
Less: Payments to redeem securities		
Costs of execution		
Payments per trading account		
	£	
Net realisations	£	
Amounts received from calls on contributories		
	£	

Cr.

	£ s. d.		Payments. s. d.
By Board of Trade and Court fees			
Law costs of petition			
Other law costs			
Liquidator's remuneration, viz.:—			
per cent. on £ assets realised			
per cent. on £ assets distributed in dividend			
Special managers' charges			
Person appointed to assist in preparation of Statement of Affairs			
Auctioneer's charges as taxed			
Other taxed costs			
Costs of possession			
Costs of notices in Gazette and local papers			
Incidental outlay			
Total cost of realisation		£	
Creditors, viz.:			
(a) Preferential			
(a) Unsecured: — dividend of s. d. in the £ on £			
The estimate of amount expected to rank for dividend was £			
Amount returned to contributories			
Balance			
		£	

(a) State number of creditors.

Assets not yet realised including calls estimated to produce £

(*Add here any special remarks the liquidator thinks desirable.*)

Creditors can obtain any further information by inquiry at the office the liquidator.

Dated this day of 189 .

(*Signature of liquidator*)

(*Address*)

No. 72.

Notice of dividend. [Rule 122.]

(*Title.*)

[Please bring this dividend notice with you.]

Dividend of in the £.

[Address.]

Date 189 .

Notice is hereby given that a dividend of in the pound has been declared in this matter, and that the same may be received at office, as above, on the of 189 , or on any subsequent between the hours of .

Upon applying for payment this notice must be produced entire, together with any bills of exchange or other securities held by you; and if you do not attend personally you must fill up and sign the subjoined forms of *receipt and authority*, when a cheque payable to your order will be delivered to the bearer.

To

(Signed) *G.H.* [Liquidator.]

RECEIPT.

189 .

Received of the sum of pounds shillings and pence being the amount payable to in respect of the dividend of in the £ on claim against this estate.

Signature.

£ : :

AUTHORITY.

SIR,

PLEASE deliver to the

nsert the name of the person who is to receive the cheque, or the words "me by post," if you wish the cheque sent to you in that way.)

cheque for the dividend payable to in this matter.

Creditor's signature.

To

No. 73 (*i*).

General Proxy. [Rule 123.]

(*Title.*)

I (*a*) of , a creditor [*or* contributory] hereby appoint (*b*) to be (*c*) general proxy to vote at the meeting of creditors

(*i*) Printed as altered by an order of the Board of Trade, dated 8th January, 1892, and made under r. 3 (2) of the Rules of 1890.

(*a*) If a firm write "" instead of "" and set out the full name of the firm.

(*b*) Here insert *either* (but not both) "Mr. of , a clerk, manager, &c., in my regular employ," *or* "the Official Receiver in the above matter." The standing of the person appointed must be clearly set out.

(*c*) "My" *or* "our."

APPENDIX VII.

Forms 73—74.

[*or* contributories] to be held in the above matter on the day of , 189 , or at any adjournment thereof.

Dated this day of , 189 .

[Signed (*d*)]

Signature of witness (*i*).

Address.

(*d*) If a firm, sign the firm's trading title, and add "by *A. B.*, a partner in the said firm."

As to signature by agent, *see* footnotes 1 and 2.

Notes.

1. The authorised agent of a corporation may fill up blanks, and sign for the corporation, thus:—

For the Company,

J.S. (duly authorised under the seal of the company.)

2. A proxy may be filled up and signed by any person having a general authority in writing to sign. Such person shall sign,

J.S. (duly authorised by a general authority in writing to sign on behalf of (*name of creditor*) (*e*)).

(*e*) The Official Receiver or liquidator may require the authority to sign to be produced for his inspection.

Certificate to be signed by person other than Creditor or Contributory filling up the above Proxy.

I, of , being a [*here state whether clerk or manager in the regular employment of the creditor or contributory or a commissioner to administer oaths in the Supreme Court*], hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named and in his presence, before he attached his signature [*or* mark] thereto.

Dated this day of 189 .

Signature

The proxy must be lodged with the Official Receiver or liquidator not later than the day before the meeting at which it is to be used (*k*).

No. 74.

Special Proxy. [Rule 123.]

(*Title.*)

I, (*a*) of , a creditor [or contributory], hereby appoint (*b*) as (*c*) proxy at the meeting of creditors [*or* contributories] to be held on the day of 189 , or at any adjournment thereof, to vote (*d*) .

Dated this day of 189 .

[Signed] (*e*).

Signature of witness.

Address.

(*a*) If a firm, write "we" instead of "I," and set out the full name of the firm.

(*b*) Here insert *either* "Mr. of " *or* "the Official Receiver in the above matter."

(*c*) "My" *or* "our."

(*d*) Here insert the word "for" or the word "against" as the case may require, and specify the particular resolution.

(*e*) If a firm, sign the firm's trading title, and add "by *A. B.*, partner in the said firm.'

As to signature by agent, *see* footnotes 1 and 2.

(*i*) The signature of the creditor appointing a proxy must not be attested as witness by the person nominated as proxy, *Re Parrott*, [1891] 2 Q. B. 156.

(*k*) If the proxy is to be used at the first meeting of creditors or contributories, it must be lodged not later than the time mentioned in the notice convening the meeting, see Rules, 1892, r. 30.

NOTES.

1. A creditor or contributory may give a special proxy to any person to vote at any specified meeting or adjournment thereof on all or any of the following matters:—

(a.) For or against the appointment or continuance in office of any specified person as liquidator or as member of the committee of inspection:

(b.) On all questions relating to any matter, other than those above referred to, arising at a specified meeting or adjournment thereof.

2. The authorised agent of a corporation may fill up blanks and sign for the corporation, thus:—

"For the Company.
J.S. (duly authorised under the seal of the Company)."

3. A proxy given by a creditor or contributory may be filled up and signed by any person having a general authority in writing to sign for such creditor or contributory. Such person shall sign,

J.S. [duly authorised by a general authority in writing to sign on behalf of (*name*)] (*f*).

(*f*) The Official Receiver or liquidator may require the authority to sign to be produced for his inspection.

Certificate to be signed by person other than Creditor or Contributory filling up the above Proxy.

I, , of , being a (*here state whether clerk or manager in the regular employment of the creditor or contributory or a commissioner to administer oaths in the Supreme Court*), hereby certify that all insertions in the above proxy are in my own handwriting, and have been made by me at the request of the above-named and in his presence before he attached his signature (*or* mark) thereto.

Dated this day of 189 .

(Signature)

The proxy must be lodged with the Official Receiver or liquidator not later than the day before the meeting at which it is to be used (*l*).

No. 75 (*m*).

No. of company

Form of Statement of Receipts and Payments and General Directions as to Statements. [Rules 126 and 127A.]

Size of Sheets.

1. Every statement must be on sheets 13 inches by 16 inches.

Form and Contents of Statement.

2. Every statement must contain a detailed account of all the liquidator's realisations and disbursements in respect of the Company. The statement of realisations should contain a record of all receipts derived from assets existing at the date of the winding-up order or resolution and subsequently realised, including balance in bank, book debts and calls

(*l*) If to be used at the first meeting, see Rules, 1892, r. 30.

(*m*) This and the next form, 75A, were substituted for an earlier form by an order of the Board of Trade, dated the 20th July, 1899, and made under r. 3 (2) of the Rules, 1890.

APPENDIX VII.
Form 75

collected, property sold, &c.; and the account of disbursements should contain all payments for costs and charges, or to creditors, or contributories. Where property has been realised, the gross proceeds of sale must be entered under realisations, and the necessary payments incidental to sales must be entered as disbursements. These accounts should not contain payments into the Companies Liquidation Account or payments into or out of bank, or temporary investments by the liquidator, or the proceeds of such investments when realised, which should be shown separately:—

(a.) by means of the bank pass book;

(b.) by a separate detailed statement of monies invested, and investments realised.

Interest allowed or charged by the bank, bank commission, &c., and profit or loss upon the realisation of temporary investments, should, however, be inserted in the accounts of realisations or disbursements, as the case may be. Each receipt and payment must be entered in the account in such a manner as sufficiently to explain its nature. The receipts and payments must severally be added up at the foot of each sheet, *and the totals carried forward from one account to another without any intermediate balance, so that the gross totals shall represent the total amounts received and paid by the liquidator respectively.*

Trading Account.

3. When the liquidator carries on a business, a trading account must be forwarded as a distinct account, and the totals of receipts and payments on the trading account must alone be set out in the statement.

Dividends, &c.

4. When dividends or instalments of compositions are paid to creditors, or a return of surplus assets is made to contributories, the total amount of each dividend, or instalment of composition, or return to contributories, actually paid, must be entered in the statement of disbursements as one sum; and the liquidator must forward separate accounts showing in lists the amount of the claim of each creditor, and the amount of dividend or composition payable to each creditor, and of surplus assets payable to each contributory, distinguishing in each list the dividends or instalments of composition and shares of surplus assets actually paid and those remaining unclaimed. Each list must be on sheets 13 inches by 8 inches.

5. Credit should not be taken in the statement of disbursements for any amount in respect of liquidator's remuneration unless it has been duly allowed by resolution of the company in general meeting, or by order of Court.

LIQUIDATOR'S STATEMENT OF ACCOUNT.

Pursuant to Section 15 *of the Companies* (*Winding-up*) *Act*, 1890.

Name of company

Nature of proceedings (whether wound up by the Court, or under the supervision of the Court, or voluntarily) . . . .

Date of commencement of winding up

Date to which statement is brought down

Name and address of liquidator

This statement is required in duplicate.

LIQUIDATOR'S STATEMENT OF ACCOUNT pursuant to § 15 of the Companies (Winding-up) Act, 1890.

Realisations.

Date.	Of whom received.	Nature of Assets realised.	Amount.
			£ s. d.
		Brought forward	
		Carried forward	

This margin is reserved for binding, and should not be written across.

Disbursements.

Date.	To whom paid.	Nature of Disbursements.	Amount.
			£ s. d.
		Brought forward	
		Carried forward (a)	

This margin is reserved for binding, and should not be written across.

(a) NOTE.—No balance should be shown on this account, but only the total realisations and disbursements, which should be carried forward to the next account.

APPENDIX VII.

Form 75.

Analysis of Balance.

	£	s.	d.
Total Realisations	,,	,,	
,, Disbursements	,,	,,	
Balance .	,,	,,	

The Balance is made up as follows:—

	£	s.	d.	£	s.	d.
1. Cash in hands of liquidator				,,	,,	
2. Amounts invested by liquidator (*as per separate account herewith*)	,,	,,				
Less amounts realised from same	,,	,,				
Balance of amount invested				,,	,,	
3. Total payments into Bank, including balance at date of commencement of winding up (*as per Bank Book*) . . .	,,	,,				
Total withdrawals from Bank .	,,	,,				
Balance at Bank . . .				,,	,,	
4. Amount in Companies Liquidation Account				,,	,,	
Total Balance as shown above . . .			£	,,	,,	

NOTE.—The liquidator should also state—

(1.) The amount of the estimated assets and liabilities at the date of the commencement of the winding up . . . . *Assets . . £ *Liabilities . £

* The amount stated should be, respectively, the assets available for dividend (*i.e.*, not charged to secured creditors or debenture holders) and the unsecured liabilities ranking for dividend.

(2.) The total amount of the capital paid up at the date of the commencement of the winding up . . . . . paid up in cash £ Issued as paid up otherwise than for cash £

(3.) The general description and estimated value of outstanding assets (if any) . . . .

(4.) The causes which delay the termination of the winding up

(5.) The period within which the winding up may probably be completed. . . . .

No. 75A (n).

No. of Company

Affidavit Verifying Liquidator's Statement of Account. [Rule 127A.]

(a)

I

of

the liquidator of the above-named company, make oath and say:—

That (b) *the account hereunto annexed marked* B *contains a full and true account of my receipts and payments in the winding up of the above-named company*, from the day of 189 , to the day of 189 , inclusive (b), *and that* I have not, nor has any other person by my order or for my use during such period, received or paid any moneys on account of the said company (b) *other than and except the items mentioned and specified in the said account.*

Sworn at, }

(a) Insert here the title of the company.

(b) NOTE.—If no receipts or payments, strike out the words in italics. The affidavit is *not* required in duplicate.

No. 75B (o).

Liquidator's Trading Account. [Rule 137.]

(Name of Company.)

G.H. the liquidator of the above-named company in account with the estate.

Receipts. Payments.

Dr. Cr.

Date.					Date.				

(Date)

Liquidator.

No. 75C.

List of Dividends or Composition.

(Name of Company.)

I hereby certify that a dividend (or composition) of in the £ was declared payable on and after the day of 18 , and that the creditors whose names are set forth below are entitled to the

(n) This form was substituted by order of the Board of Trade dated the 20th July, 1899, for a form introduced by the Rules of the 30th April, 1891.

(o) This and the following forms 75C and 75D were introduced by the Rules of 30th April, 1891.

APPENDIX VII. Forms 75c—75D.

amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

Liquidator.

Dated the day of 189 .

To the Board of Trade.

Surname.	Christian Name.	Amount of Proof.			Amount of Dividend or Composition.					
					Paid.			Unclaimed.		
		£	s.	d.	£	s.	d.	£	s.	d.

No. 75D.

List of Amounts Paid or Payable to Contributories.

(Name of Company.)

I hereby certify that a return of surplus assets was declared payable to contributories on and after the day of 18 , at the rate of per share, and that the contributories whose names are set forth below are entitled to the amounts set opposite their respective names, and have been paid such amounts except in the cases specified as unclaimed.

Liquidator.

Dated the day of 189 .

To the Board of Trade.

Surname.	Christian Name.	No. of Shares.	Amount returned on Shares.					
			Paid.			Unclaimed.		
			£	s.	d.	£	s.	d.

No. 76.

Certificate by Committee of Inspection as to Audit of Liquidator's Accounts.
[Rule 135.]

(*Title.*)

We, the undersigned, members of the committee of inspection in the winding up of the above-named company, hereby certify that we have examined the foregoing account with the vouchers, and that to the best of our knowledge and belief the said account contains a full, true, and complete account of the liquidator's receipts and payments.

Dated this day of 189 .

A.B.
C.D. } Committee of Inspection.
E.F.

No. 77 (*p*).

Affidavit verifying Liquidator's Account. [Rule 136.]

(*Title.*)

I, G. H., of , the liquidator of the above-named company, make oath and say:—

That* *the Account hereunto annexed marked B is a true copy of the "Cash Book" kept by me as such liquidator pursuant to Rule* 144 *of the Companies (Winding-up) Rules,* 1890, *and contains a full and true account of my receipts and payments as such liquidator* from the day of to the day of inclusive,* *and that* I have not, nor has any other person by my order, or for my use, during such period, received or paid any moneys on account of the said company* *other than and except the items mentioned and specified in the said account.*

Sworn at, &c.

*NOTE.—If no receipts or payments, strike out the words in italics.

No. 78.

Notice to Creditors and Contributories of intention to apply for Release.
[Rule 148.]

(*Title.*)

Take notice that I, the undersigned liquidator of the above-named company, intend to apply to the Board of Trade for my release, and further take notice that any objection you may have to the granting of my release must be notified to the Board of Trade within twenty-one days of the date hereof.

A summary of my receipts and payments as liquidator is hereto annexed.

Dated this day or 189 .

G.H., Liquidator.

To *K.L.*

NOTE.—Section 22 (8) of the Companies (Winding-up) Act, 1890, enacts that "An order of the Board releasing the liquidator shall

(*p*) Printed as altered by an Order of the Board of Trade dated the 26th June, 1895, and made under Rules, 1890, r. 3 (2).

APPENDIX VII. Forms 78—80.

discharge him from all liability in respect of any act done or default made by him in the administration of the affairs of the company, or otherwise in relation to his conduct as liquidator, but any such order may be revoked on proof that it was obtained by fraud or by suppression or concealment of any material fact."

No. 79.

Application by Liquidator to Board of Trade for Release. [Rule 148.]

(*Title.*)

I, *G.H.*, the liquidator of the above-named company, do hereby report to the Board of Trade, as follows:—

1. That the whole of the property of the company has been realised for the benefit of the creditors and contributories [and a dividend to the amount of shillings in the pound has been paid as shown by the statement hereunto annexed, and a return of in the pound has been made to the contributories of the company];

[*or* That so much of the property of the company as can, according to the joint opinion of myself and the committee of inspection, hereunto annexed in writing under our hands, be realised without needlessly protracting the liquidation, has been realised, as shown by the statement hereunto annexed, and a dividend to the amount of shillings has been paid]; (*a*)

(*a*) Add if necessary, "That the rights of the contributories between themselves have been adjusted."

2. I therefore request the Board of Trade to cause a report on my accounts to be prepared, and to grant me a certificate of release.

Dated this day of 189 .

G.H., Liquidator.

No. 80.

Liquidator's trading account. [Rule 137.]

(*Title.*)

G.H., the liquidator of the above-named company in account with the estate.

RECEIPTS. *Dr.*					PAYMENTS. *Cr*				
Date.					Date.				

Liquidator.

(*Date.*)

We have examined this account with the vouchers and find the same correct, and we are of opinion the expenditure has been proper.

Dated this day of 189 .

Committee of Inspection

[*or* member of the Committee of Inspection].

No. 81.

Affidavit verifying Liquidator's Trading Account. [Rule 137.]

(*Title.*)

I, the liquidator of the above-named company, make oath and say that the account hereto annexed is a full, true, and complete account of all money received and paid by me or by any person on my behalf in respect of the carrying on of the trade or business of the company, and that the sums paid by me as set out in such account have, as I believe, been necessarily expended in carrying on such trade or business.

Sworn, *&c.*

Liquidator.

No. 82.

Affidavit verifying Account of Unclaimed and Undistributed Funds. [Rule 129.]

(*Title.*)

I, of make oath and say that the particulars entered in the statement hereunto annexed, marked A, are correct, and truly set forth all money in my hands or under my control, representing unclaimed or undistributed assets of the above company, and that the amount due by me to the Companies Liquidation Account in respect of unclaimed dividends and undistributed funds is £ .

Signature.

Sworn, *&c.*

No. 83.

Request by Committee of Inspection to Board of Trade to sell Securities. [Rule 134.]

(*Title.*)

We, the committee of inspection in the above matter, hereby certify that a sum of £ , forming part of the assets of the above-named company, has been invested in Government securities, and that the sum of £ is now required to answer demands in respect of the said company. And we request that so much of the said securities as may be necessary for the purpose of answering such demands may be realised by the Board of Trade, and that the amount realised may be placed to the credit of the said company.

Dated this day of 189 .

_____
_____ } Committee of Inspection.
_____

APPENDIX VII.

Forms 84—86.

No. 84.

Certificate and Request by Committee of Inspection as to Investment of Funds. [Rule 134.]

(*Title.*)

We, the committee of inspection in the above matter, hereby certify that in our opinion the cash balance standing to the credit of the above-named company is in excess of the amount which is required for the time being to answer demands in respect of such company's estate, and request that the Board of Trade will invest the sum of £ in Government securities, to be placed to the credit of the said account for the benefit of the said company.

Dated this day of 189 .

_____
_____ } Committee of Inspection.
_____

No. 85.

Affidavit by Special Manager verifying Account. [Rule 172.]

(*Title*).

I, of , make oath and say as follows :—

1. The account hereunto annexed marked with the letter A, produced and shown to me at the time of swearing this my affidavit, and purporting to be my account as special manager of the estate or business of the above-named company, contains a true account of all and every sums and sum of money received by me or by any other person or persons by my order or to my knowledge or belief for my use on account or in respect of the said estate or business.

2. The several sums of money mentioned in the said account hereby verified to have been paid or allowed have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

Sworn, *&c.*

No. 86 (*q*).

Notices for London Gazette. [Rule 152.]

(1.) *Winding-up Orders.* [Rule 41.]

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Date of Order.	Date of Presentation of Petition.

(*q*) Printed as altered by an Order of the Board of Trade dated 13th February, 1891, and made under Rules, 1890, r. 3 (2).

(2.) *First Meetings.* [Rule 44.]

Name of Company.	Address of Registered Office.	Court.	Number.	Date of First Meeting.	Hour.	Place.

(3.) *Notice of Day appointed for Public Examination.* [Rule 75.]

Name of Company.	Address of Registered Office.	Court.	Number of Matter.	Date fixed for Examination.	Names of Persons to be Examined.	Hour.	Place.

(4.) *Notice of Intended Dividend.* [Rule 122 (1) and (4).]

Name of Company.	Address of Registered Office.	Court.	Number	Last Day for Receiving Proofs.	Name of Liquidator.	Address.

APPENDIX VII.

Form 86.

(5.) *Notice of Dividend.* [Rule 122 (3).]

Name of Company.	Address of Registered Office.	Court.	Number.	Amount per £.	First or Final, or otherwise.	When Payable.	Where Payable.

(6.) *Appointments of Liquidators.* [Rule 63 (5).]

Name of Company.	Address of Registered Office.	Court.	Number.	Liquidator's Name.	Address.	Date of Appointment.

(7.) *Notice of Releases of Liquidators.* [Rule 149.]

Name of Company.	Address of Registered Office.	Court.	No. of Matter.	Liquidator's Name.	Liquidator's Address.	Date of Release.

No. 87.

Memorandum of Advertisement or Gazetting. [Rule 147.]

(*Title.*)

Name of Paper.	Date of Issue.	Date of Filing.	Nature of Order, &c.

(Signed) *A.B.*

No. 88.

Register of Winding-up Orders to be kept in the Courts. [Rule 145.]

Number of Winding-up Order.	Number of Petition.	Date of Petition.	Date of Winding-up Order.	Dates of Public Examinations (if any).	Liquidator

No. 89.

Register of Petitions to be kept in the Courts. [Rule 145.]

No. of Petition.	Name of Company.	Address of Registered Office.	Description of Company.	Date of Petition.	Petitioner.	Date of Winding-Order.

APPENDIX VII.

Rules 1—3.

GENERAL RULES MADE PURSUANT TO THE COMPANIES ACTS, 1862 TO 1890, AND THE JUDICATURE ACT, 1881.

THE COMPANIES WINDING-UP RULES, 1892.

PART I.—PROCEDURE IN THE HIGH COURT.

PART II.—RULES RELATING TO WINDING-UP MATTERS IN ALL COURTS TO WHICH JURISDICTION IS GIVEN UNDER THE ACTS.

Preliminary.

Application of rules.

1. These rules shall apply to all proceedings for or in relation to the winding up of a company where a petition to wind up the company or to continue the voluntary winding up of the company under the supervision of the Court has been presented, or where an application in the voluntary winding up of the company has for the first time been made, on or after the 1st day of January, 1891; unless the Judge before whom any such proceedings may be pending when these rules come into operation shall think it expedient to retain them.

PART I.—PROCEDURE IN THE HIGH COURT.

Court and Chambers.

Office of registrar in High Court.

2.—(1.) All proceedings in the winding up of companies in the High Court to which these rules apply shall be from time to time attached to one or more of the registrars (*a*), who shall, together with the necessary clerks and officers, and subject to the Acts and rules, act under the general or special directions of the Judge of the High Court.

(2.) Every other registrar may act for and in place of such registrar as above-mentioned in all proceedings under the Acts and rules (*b*), including the holding of public examinations, and when so acting such other registrar shall be deemed to be the registrar for the purposes of the Acts and rules.

Matters in High Court to be heard in Court.

3.—(1.) The following matters and applications shall be heard before the Judge of the High Court in open Court (*c*):—

(a.) Petitions.

(b.) Appeals from the Board of Trade and Official Receiver to the High Court (*d*).

(c.) Applications by the Board of Trade under section 15 of the Companies (Winding-up) Act, 1890 (*e*).

(d.) Applications for the committal of any person to prison for contempt.

(e.) Such matters and applications as the Judge may from time to time by any general or special orders direct to be heard before him in open Court.

(*a*) See *infra*, r. 35, and Rules, August, 1892, *infra*, p. 1557.

(*b*) See *infra*, r. 35.

(*c*) This rule supersedes Rules, 1890, r. 4, which is repealed.

(*d*) See, too, Rules, 1890, r. 170. This rule applies to appeals from the Official Receiver only when acting in that capacity, *National Whole Meal Bread, &c., Co.* [1892], 2 Ch. 457.

(*e*) See, too, *infra*, r. 16, and *ante*, p. 1475.

(2.) Examinations of persons summoned before the High Court under section 115 of the Companies Act, 1862, shall, unless the Judge of the High Court shall otherwise direct, be held before the registrar in chambers.

(3.) Every other matter or application in the High Court under the Acts to which the rules (*f*) apply may be heard and determined in chambers.

Applications in chambers.

4. Subject to the provisions of the Acts and rules (*f*), the registrar may, under the general or special directions of the Judge, hear and determine any application or matter in the High Court which, under the Acts and rules (*f*), may be heard and determined in chambers. Any matter or application in chambers may at any time be adjourned from chambers to be heard by the Judge of the High Court in Court, and any matter or application in Court may be adjourned to be heard and dealt with in chambers.

Applications in Court and chambers.

5. Applications in Court (*g*), other than petitions, shall be made by motion, notice of which shall be served on every person against whom an order is sought not less than two clear days before the day named in the notice for hearing the motion. Applications in chambers, other than *ex parte* applications, shall be made by summons.

Proceedings.

Title in High Court.

6.—(1.) Every proceeding in the High Court in a winding-up matter to which these rules apply shall be dated, and shall be intituled as follows (*h*):—

In the High Court of Justice.
Companies (Winding-up).
Mr. Justice

In the matter of the Companies Acts, 1862 to 1890.

with the name of the matter to which it relates. Numbers and dates may be denoted by figures.

(2.) The first proceeding in every winding-up matter (*i*) shall have a distinctive number assigned to it in the office of the registrar, and all proceedings in any matter subsequent to the first proceeding shall bear the same number as the first proceeding.

Written or printed proceedings.

7. All proceedings to which these rules apply shall be written or printed or partly written or partly printed on paper of the size of 13 inches in length and 8 inches in breadth, or thereabouts; but no objection shall be allowed to any proof, affidavit, or proxy on account only of its being written or printed on paper of other size.

Process to be sealed.

8. All orders, summonses, petitions, warrants, process of any kind (including notices when issued by the Court), and office copies in any winding-up matter to which these rules apply shall be sealed.

Summonses. Form 58.

9. Every summons in a winding-up matter (*i*) in the High Court to which these rules apply shall be prepared by the applicant or his solicitor, and issued from the office of the registrar. A summons, when sealed, shall be deemed to be issued. The person obtaining the summons shall leave in

(*f*) See r. 35, *infra*, and Rules, August, 1892, *infra*, p. 1557.

(*g*) The affidavits to be used should be served with notice of the application, *Ex parte Collins*, W. N. 1892, 96.

(*h*) This supersedes Rules, 1890, r. 7.

(*i*) See Rules, August, 1892, r. 3, *infra*, p. 1557.

the registrar's office a duplicate which shall be stamped with the prescribed stamp and filed.

Rules 9—15.

Orders.

10. Every order, whether made in Court or in chambers, in a winding-up matter (*ii*) in the High Court to which these rules apply, shall be drawn up by the registrar, unless in any proceeding or classes of proceedings the Judge of the High Court or registrar who makes the order shall direct that no order need be drawn up. Where a direction is given that no order need be drawn up the note or memorandum of the order, signed or initialled by the Judge of the High Court or the registrar making the order, shall be sufficient evidence of the order having been made.

File of proceedings in office of registrar.

11. All petitions, affidavits, summonses, orders, proofs, notices, depositions, bills of costs, and other proceedings in the High Court in a winding-up matter (*ii*) to which these rules apply shall be kept and remain of record in the office of the registrar in one continuous file, and no proceeding in any winding-up matter to which these rules apply shall, from and after the commencement of these rules, be filed in the Central Office (*j*).

Office copies.

12. All office copies of petitions, affidavits, depositions, papers, and writings, or any parts thereof, required by any liquidator, contributory, creditor, officer of a company, or other person entitled thereto, shall be provided by the registrar, and shall, except as to figures, be fairly written out at length, and be sealed and delivered out without any unnecessary delay and in the order in which they shall have been bespoken.

Warrants of arrest.

13. A warrant of arrest issued by the High Court under Rule 76 of the Companies Winding-up Rules, 1890, shall be issued in the Central Office of the Supreme Court, pursuant to an order of the Judge directing such issue (*k*).

Transfer of actions (*l*).

14.—(1.) Where an order has been made in the High Court for the winding up of a company on a petition presented on or after the 1st day of January, 1891, the Judge of the High Court shall have power, without further consent, to order the transfer to him of any cause or matter pending in any other Court or Division brought or continued by or against the company.

(2.) Where any action brought by or against a company against which a winding-up order has been made is transferred to the Judge of the High Court, the registrar may, under the general or special directions of the Judge, hear, determine, and deal with any application, matter, or proceeding which, if the action had not been transferred, would have been determined in chambers.

(3.) Provided always that nothing in this Rule or in Order XLIX., rule 5, of the Rules of the Supreme Court, 1883, shall authorise the transfer of any action by a mortgagee or debenture holder for the purpose of realising his security nor the transfer of any action which is not brought to enforce payment of a debt or demand provable in the winding up.

Petitions in the High Court.

Petitions in High Court.

15. A petition to the High Court in a winding-up matter (*ii*) to which these rules apply shall be presented at the office of the registrar, who

(*ii*) See Rules, August, 1892, r. 3, *infra*, p. 1557.

(*j*) See also *infra*, rr. 31-33, and the Rule, November, 1895, *infra*, p. 1558. These rules supersede Rules, 1890, rr. 145, 146, which are repealed.

(*k*) See Forms 41 *et seq.*, *ante*, p. 1514.

(*l*) See also Rules, August, 1892, and *ante*, p. 909.

shall appoint the time and place at which the petition is to be heard. Notice of the time and place appointed for hearing the petition shall be written on the petition and sealed copies thereof, and the registrar may from time to time alter the time appointed and fix another time (*m*).

Applications under Section 15 *of the Companies* (*Winding-up*) *Act*, 1890.

Applications by Board of Trade under § 15 of the Act.

16. Every application by the Board of Trade for the purpose of ascertaining and getting in money payable into the Bank of England, pursuant to section 15 of the Companies (Winding-up) Act, 1890, shall in a winding up in the High Court to which these rules apply be made and dealt with by the Judge of the High Court upon motion (*n*).

Miscellaneous.

Proceedings in windings up under supervision, and voluntary windings up.

17. In all proceedings for the winding up of a company under the supervision of the Court, or the voluntary winding up of a company, to which these rules apply, the rules contained in the General Order of the High Court of Chancery dated the 11th of November, 1862 (*o*), which relate to such proceedings, shall, so far as applicable, be observed, subject to the following modifications:—

Expressions in the said order relating to the Judge shall be deemed to refer to the Judge of the High Court within the meaning of these rules.

Expressions in the said order relating to the chief clerk and the chambers of the Judge shall be deemed to refer to the registrar and his office.

All orders shall be drawn up and filed in the office of the registrar in the manner herein-before provided with reference to orders made on the compulsory winding up of a company, and Rule 11 of these rules, relating to the filing of affidavits and other documents in the registrar's office, shall apply to all such proceedings.

PART II.—RULES RELATING TO WINDING-UP MATTERS IN ALL COURTS TO WHICH JURISDICTION IS GIVEN UNDER THE ACTS.

Hearing of Petitions and Orders made thereon (*p*).

Attendance before hearing to show compliance with rules as to petition.

18. After a petition has been presented, the petitioner shall, on a day to be appointed by the registrar, not less than two days before the day appointed for the hearing of the petition, attend before the registrar and satisfy him that the petition has been duly advertised, that the prescribed affidavit verifying the statements therein and the affidavit of service (if any) (*q*) have been duly filed, and that the provisions of the rules as to petitions for winding up companies have been duly complied with by the petitioner (*r*). No order for the winding up of a company shall be made on the petition of any petitioner who has not, prior to the hearing of the

(*m*) See also *infra*, rr. 18 *et seq.*

(*n*) This supersedes Rules, 1890, r. 130A (*a*), see *ante*, p. 1474, and *infra*, r. 34.

(*o*) See the order, *ante*, pp. 1415 *et seq.*, and notes thereto.

(*p*) These rules, 18–24, re-enacted the Rules of February, 1891, which are annulled. See *ante*, pp. 882 *et seq.*

(*q*) See Rules, 1890, Forms 14 and 15.

(*r*) As to affidavits in opposition to petition or in reply, and to the withdrawal of a petition, see Rules dated 29th March, 1893, *infra*, p. 1558.

petition, attended before the registrar at the time appointed and satisfied him in manner required by this rule.

Form of advertisement of petition.
Form 3.

19. Every advertisement of a petition shall contain a note at the foot thereof stating that any person who intends to appear on the hearing of the petition, either to oppose or support, must send notice of his intention to the petitioner within the time and in the manner prescribed by the next succeeding rule; and an advertisement of a petition for the winding up of a company by the Court which does not contain such a note shall be deemed irregular.

Notice by persons who intend to appear on hearing of petitions.
Form 2.

20. Every person who intends to appear on the hearing of a petition shall serve on, or send by post, notice in writing of his intention to the petitioner at the address stated in the advertisement of the petition. The notice shall be signed by such person, or his solicitor, and shall be served, or if sent by post shall be posted in such time as in ordinary course of post to reach the address not later than six o'clock in the afternoon of the day previous to the day appointed for the hearing of the petition. The notice may be in Form 2 (*s*) with such variations as circumstances may require. A person who has failed to comply with this rule shall not, without the special leave of the Court, be allowed to appear on the hearing of the petition.

List of names and addresses of persons who appear on the petition.
Form 4.

21. The petitioner shall prepare a list of the names and addresses of the persons who have given notice of their intention to appear on the hearing of the petition, and of their respective solicitors, which shall be in Form 4 (*t*). A fair copy of the list shall, on the day appointed for hearing the petition, be handed by the petitioner into Court prior to the hearing of the petition.

Notice that winding-up order has been pronounced to be given to Official Receiver.
Forms 5 and 6.

22. When an order for the winding up of a company or for the appointment of the Official Receiver as provisional liquidator, prior to the making of an order for the winding up of the company, has been pronounced in Court, the registrar shall, on the same day, send to the Official Receiver a notice informing him that the order has been pronounced.

The notice may be in Forms 5 and 6 (*u*) respectively, with such variations as circumstances may require.

Documents for drawing up order to be left with registrar.

23. It shall be the duty of the petitioner, and of all other persons who have appeared on the hearing of the petition, at latest on the day following the day on which an order for the winding up of a company is pronounced in Court, to leave at the registrar's office all the documents required for the purpose of enabling the registrar to complete the order forthwith.

No appointments for settling order.

24. It shall not be necessary for the registrar to make an appointment to settle the order, or to give notice to any of the parties thereto, unless in any particular case the special circumstances make an appointment or notice necessary.

Ordinary Resolution of Creditors and Contributories.

Resolution of creditors and contributories.

25. At a meeting of creditors or contributories held in the winding up of a company under the Companies (Winding-up) Act, 1890, a resolution

(*s*) Printed in Appendix to Rules, 1890, as Form 15A.

(*t*) Printed in Appendix to Rules, 1890, as Form 16A.

(*u*) Ib. Forms 19A and 19B.

shall be deemed to be passed when at a meeting of creditors a majority in number and value of the creditors present, personally or by proxy, and voting on the resolution, have voted in favour of the resolution, and at a meeting of the contributories when a majority in number and value of the contributories present, personally or by proxy, and voting on the resolution, have voted in favour of the resolution, the value of the contributories being determined according to the number of votes conferred on each contributory by the regulations of the company (x).

Public Examinations.

Public examinations.

26. Where the Judge makes an order under section 8 of the Companies (Winding-up) Act, 1890, directing any person or persons to attend for public examination :—

(a.) The examination shall be held before the Judge. Provided that in the High Court the Judge may direct that the whole or any part of the examination of any such person or persons be held before the registrar or before any of the persons mentioned in sub-sect. 9 of the said section.

(b.) The Judge may, if he think fit, either in the order for examination, or by any subsequent orders, give directions as to the special matters on which any such person is to be examined.

(c.) Where on an examination held before the registrar or one of the persons mentioned in sub-sect. 9 of the said section he is of opinion that such examination is being unduly or unnecessarily protracted, or for any other sufficient cause, he may adjourn the examination of any person or any part of the examination to be held before the Judge.

(d.) If the winding up is in the Stannaries Court the examination shall be held before the Vice-Warden (y).

Depositions taken at public examinations.

27. Where in the course of the winding up of a company an order has been made for the public examination of persons named in the order pursuant to section 8 of the Companies (Winding-up) Act, 1890, and it appears from the examination that the persons examined, or some of them, have misapplied, or retained, or become liable, or accountable for moneys or property of the company, or been guilty of misfeasance or breach of trust in relation to the company, then in any proceedings subsequently instituted under section 10 of the said Act, on the application of the Official Receiver or liquidator for the purpose of examining into the conduct of the said persons, or any of them, and compelling repayment or restoration to the company of any moneys or property, or contribution by way of compensation to the assets of the company by such persons, or any of them, the verified notes of the examination of such person who was examined under the order shall, subject as herein-after mentioned, and to any order or directions of the Court as to the manner and extent in and to which the notes shall be used, and subject to all just exceptions to the admissibility in evidence against any particular person or persons of any of the statements contained in the notes of the examinations, be admissible

(x) This supersedes Rules, 1890, r. 53, which is repealed.

(y) This supersedes Rules, 1890, r. 72, which is repealed. The Stannaries Court is now abolished, and its winding-up jurisdiction is vested in the County Court at Truro, see p. 1388, note (i).

in evidence against any of the persons against whom the application is made who, under section 8 of the said Act and the order for the public examination, was or had the opportunity of being present at and taking part in the examination. Provided that before any such notes of a public examination shall be used on any such application, the person intending to use the same shall, not less than fifteen days before the day appointed for hearing the application, give notice of such intention to each person against whom it is intended to use such notes, or any of them, specifying the notes or parts of the notes which it is intended to read against him, and furnish him with copies of such notes, or parts of notes (except notes of the person's own depositions), and provided also that every person against whom the application is made shall be at liberty to cross-examine or re-examine (as the case may be) any person the notes of whose examination are read, in all respects as if such person had made an affidavit on the application (*z*).

Costs payable out of the Assets of the Company.

Costs.

28. No payments in respect of bills or charges of solicitors, managers' accountants, auctioneers, brokers, or other persons shall be allowed out of the assets of a company, in a winding-up matter to which these rules apply, without proof that the same have been considered and allowed by the registrar (*a*).

Time for dealing with Proof.

Proofs.

29. Subject to the power of the Court to extend the time, the Official Receiver as liquidator, not later than fourteen days from the latest date specified in the notice of his intention to declare a dividend as the time within which such proofs must be lodged, shall in writing either admit or reject wholly or in part every proof lodged with him, or require further evidence in support of it (*b*).

Proxies.

Proxies.

30. A proxy intended to be used at the first meeting of creditors or contributories, or an adjournment thereof, shall be lodged with the Official Receiver not later than the time mentioned for that purpose in the notice convening the meeting or adjourned meeting, which time shall be not earlier than twelve o'clock at noon of the day but one before, nor later than twelve o'clock at noon of the day before the day appointed for such meeting, unless the Court otherwise directs (*c*).

File of Proceedings (*d*).

File of proceedings in Courts other than High Court.

31. In Courts other than the High Court a file of proceedings in every winding up shall be kept on which all petitions, affidavits, summonses,

(*z*) See *London and General Bank*, W. N. 1894, p. 155.

(*a*) See Rules, 1890, rr. 22 *et seq.*, and Rules of August, 1892, and R. S. C. January, 1902.

(*b*) Re-enacts Rules, 1890, r. 119, substituting "not later than" for "not less than."

(*c*) As to rules relating to the first meetings, see Comp. (Winding-up) Act, 1890, Sched. I.; Rules, 1890, rr. 43–46. See, too, as to proxies, ib. rr. 123 *et seq.*

(*d*) See as to depositions of an examination under § 115 of Comp. Act, 1862, and Rules, November, 1895, *infra*, p. 1558.

orders, proofs, notices, depositions, and other proceedings in the matter shall be placed and remain of record as far as possible in continuous order (*e*).

Inspection of file in all Courts.

32. Every person who has been a director or officer of a company which is being wound up, and every duly authorised officer of the Board of Trade, shall be entitled, free of charge, and every contributory and every creditor whose claim or proof has been admitted, shall be entitled on payment of a fee of one shilling, at all reasonable times, to inspect the file of proceedings (whether in the High Court or any other Court) and to take copies or extracts from any documents therein, or to be furnished with such copies or extracts at a rate not exceeding fourpence per folio of seventy-two words (*f*).

Use of file by Board of Trade and Official Receiver.

33. Where, in the exercise of their functions under the Acts or rules, the Board of Trade or the Official Receiver require to inspect or use the file of proceedings in any matter, the registrar shall (unless the file is at the time required for use in Court or by him), on request, transmit the file of proceedings to the Board of Trade or Official Receiver, as the case may be.

Miscellaneous.

Repeal.

34. The rules mentioned in the first column hereunder are annulled and modified to the extent mentioned in the second column :—

Rule.	Extent of annulment or modification.
Companies (Winding-up) Rules, 1890:	
Rule 2	Definitions of "Court" and "Judge" so far as relates to the High Court.
Rule 4	The whole.
Rule 53	The whole.
Rule 72	The whole.
Rule 119	The whole.
Rule 130A, paragraph (*a*) . .	As to any winding up in the High Court to which these rules apply.
Rule 145	The whole.
Rule 146	The whole.
The Companies (Winding-up) Rules (February), 1891	The whole of the rules (*ff*).

Interpretation.

35.—(1.) In the application of the Companies (Winding-up) Rules, 1890 and 1891 (*g*), and these rules to any winding-up matter (*h*) to which these rules apply :—

Expressions relating to the chief clerks and registrars of the Chancery Division of the High Court shall, except in rule 133, be deemed to refer and be construed as referring to the registrar.

"Judge" shall in the High Court mean the Judge who for the time being exercises the jurisdiction of the High Court to wind up companies.

"Registrar" shall in the High Court mean and include any of the registrars in bankruptcy of the High Court, and any person who shall be appointed to fill the office of registrar under these rules, and where

(*e*) This supersedes Rules, 1890, rr. 145 and 146, which are repealed.

(*f*) See note (*d*), *ante*, p. 1554.

(*ff*) See *ante*, p. 1551, note (*p*).

(*g*) See *ante*, p. 1447, note (*a*).

(*h*) See Rules, August, 1892, r. *infra*, p. 1557.

APPENDIX VII.

Rules 35—37.

a winding-up matter is in the District Registry of Liverpool or Manchester shall mean the district registrar.

(2.) In these rules the expression "the rules" means all the rules for the time being in force in relation to winding-up matters (*i*) (including these rules).

Forms.

36. The forms in the Appendix (*ii*) specified in the first two columns hereunder shall be used in addition to the forms contained in the Appendix to the Companies Winding-up Rules, 1890, and in substitution for the forms contained in the said last-mentioned Appendix specified in the fourth column hereunder:—

No. in Appendix.	Number for Citation.	Subject-matter.	Form in Appendix of Rules of 1890.
1	[1] . . .	General Title (High Court) . . .	1.
2 to 6 inclusive.	[15*a*], [16], [16A], [17A] (*j*), [19B]	Procedure on hearing of Petitions.	—
7	[33A] . . .	Part II. of Statement of Affairs . . .	Part II. of No. 33.
8	[33B] . . .	Sheet H. of Statement of Affairs . .	Sheet H. of No. 33.
9	[33C] . . .	Sheet M. of Statement of Affairs . . .	Sheet M. of No. 33.
10	[38A] . . .	Notice to attend public examination.	—
11	[58] . . .	Summons (General) .	58.
12	[66] . . .	Proof of Debt . .	66.

Commencement, short title, and citation.

37. These rules shall commence and come into operation on the 6th day of May, 1892. They may be cited as the Companies (Winding-up) Rules, 1892, and shall be construed with and deemed to form with the Companies (Winding-up) Rules, 1890, one set of rules. The forms in the Appendix to these rules shall be deemed to form part of the forms of the Companies (Winding-up) Rules, 1890, and each form may be cited with reference to the forms of the Companies (Winding-up) Rules, 1890, by the number placed at the head of the form in square brackets.

(Signed, in respect of rules made pursuant to section 26 of the Companies (Winding-up) Act, 1890)

HALSBURY, C.

M. E. HICKS BEACH, President of the Board of Trade.

(Signed, in respect of all other provisions in these rules relating to the High Court)

HALSBURY, C.
ESHER, M.R.
NATHL. LINDLEY, L.J.
EDWARD E. KAY, L.J.
C. E. POLLOCK, B.
A. L. SMITH, J.

Dated the 6th day of April, 1892.

(*i*) See Rules, August, 1892, r. 3.

(*ii*) The forms referred to will be found printed in the Appendix to the Rules, 1890, in their numerical order.

(*j*) *Sic.* The form referred to is 19A.

Rules, August, 1892.

GENERAL RULES MADE PURSUANT TO THE COMPANIES ACTS, 1862 TO 1890, AND THE SUPREME COURT OF JUDICATURE ACT, 1891.

THE COMPANIES (WINDING-UP) RULES, AUGUST, 1892.

1. Where any action is transferred to the Judge who for the time being exercises the jurisdiction of the High Court to wind up companies, the registrar under the Companies (Winding-up) Rules may, subject to the general or special directions of the Judge, hear, determine, and deal with any application, matter, or proceeding which, if the action had not been transferred, would have been determined in chambers.

2. In every cause or matter within the jurisdiction of the Judge, whether by virtue of the Act or by transfer or otherwise, the registrar shall, in addition to his powers and duties under the Companies (Winding-up) Rules, 1890 and 1892, have all the powers and duties of a master, registrar, chief clerk, or taxing master (*jj*).

3. In the Companies (Winding-up) Rules, 1890 and 1892, and these Rules, the words "Winding-up matter" shall, in relation to the High Court, where the winding up of a company is proceeding before the Judge, include any action brought by or against that company which has been or shall be transferred to the Judge.

4. These Rules may be cited as the Companies (Winding-up) Rules, August, 1892, and shall come into operation on the 1st day of October next.

(Signed) HALSBURY, C.
COLERIDGE, C.J.
NATH. LINDLEY, L.J.
EDWARD E. KAY, L.J.
F. H. JEUNE, Pres. P.D. and A.
C. E. POLLOCK, B.

The 10th of August, 1892.

GENERAL RULE MADE PURSUANT TO SECTION 26 OF THE COMPANIES (WINDING-UP) ACT, 1890.

COMPANIES (WINDING-UP) RULE DATED 3RD DECEMBER, 1892.

Rule, Dec., 1892.

Proof of Debt.

An affidavit of proof of debt may be sworn before any officer of the Board of Trade or any clerk of an Official Receiver duly authorised in writing by the Court or the Board of Trade in that behalf (*k*).

This rule shall come into operation on the fifth day of January, 1893.

The third day of *December*, 1892.

(Signed) HERSCHELL, C.
(Signed) A. J. MUNDELLA,
President of the Board of Trade.

(*jj*) See R. S. C. January, 1902.
(*k*) See Rules, 1890, rr. 96 *et seq.*, and *ante*, pp. 991 *et seq.*

Rules, 29 March, 1893.

GENERAL RULES MADE PURSUANT TO SECTION 26 OF THE COMPANIES (WINDING-UP) ACT, 1890.

THE COMPANIES (WINDING-UP) RULES DATED 29TH MARCH, 1893.

1.—(a.) Affidavits in opposition to a petition that a company may be wound up under the order or subject to the supervision of the Court shall be filed within seven days of the date on which the affidavit verifying the petition is filed, and notice of the filing of every affidavit in opposition to such a petition shall be given to the petitioner or his solicitor.

(b.) An affidavit in reply to an affidavit filed in opposition to a petition shall be filed within three days of the date on which notice of such affidavit is received by the petitioner or his solicitor (*kk*).

2. When a petitioner consents to withdraw his petition or to allow it to be dismissed or the hearing adjourned, the Court may, upon such terms as it may think just, substitute as petitioner any creditor or contributory who, in the opinion of the Court, would have a right to present a petition, and who is desirous of prosecuting the petition (*l*).

The twenty-ninth day of March, 1893.

(Signed) HERSCHELL, C.

I concur,

(Signed) A. J. MUNDELLA.

President of the Board of Trade.

GENERAL RULE MADE PURSUANT TO THE COMPANIES ACTS, 1862 TO 1890, AND THE SUPREME COURT OF JUDICATURE ACTS.

Rule, Nov., 1895.

THE COMPANIES (WINDING-UP) RULE, NOVEMBER, 1895.

Depositions of Persons examined before the Court.

Filing and custody of depositions taken at private examinations.

(1.) Notwithstanding anything contained in the Companies (Winding-up) Rules, 1890-1892, the notes of the depositions of a person examined under section 115 of the Companies Act, 1862, or under any order of the Court before the Court, or before any officer of the Court, or person appointed to take such an examination (other than the notes of the depositions of a person examined at a public examination under section 8 of the Companies (Winding-up) Act, 1890), shall not be placed on the file of proceedings, or be open to the inspection of any creditor, contributory, or other person, except the Official Receiver or liquidator, unless and until the Court shall so direct, and the Court may from time to time give such general or special directions as it shall think expedient as to the custody and inspection of such notes and the furnishing of copies of or extracts therefrom (*m*).

(*kk*) See Rules, 1892, rr. 18 *et seq.*, and *ante*, pp. 887 *et seq.*

(*l*) See *ante*, p. 891.

(*m*) See Rules, 1892, rr. 11, 31–33. This rule overrules *Standard Gold Mining Co.* [1895], 2 Ch. 545. See *ante*, pp. 936, 937.

(2.) This rule may be cited as the Companies (Winding-up) Rule, November, 1895, and shall be read and construed as forming one of the Companies (Winding-up) Rules, 1890-1892.

The 26th of November, 1895.

(Signed) HALSBURY, C.
RUSSELL OF KN., C.J.
ESHER, M.R.
EDWARD E. KAY, L.J.
F. H. JEUNE, P.
A. L. SMITH, L.J.
JOSEPH W. CHITTY, J.
ROBERT B. FINLAY.
HERBERT H. COZENS-HARDY.
J. W. BUDD.

I concur,
(Signed) CHAS. RITCHIE,
President of the Board of Trade.

ORDER OF BOARD OF TRADE RELATING TO FORMS UNDER THE COMPANIES ACTS, 1862 AND 1900. DATED 28TH DECEMBER, 1900 (*mm*).

THE COMPANIES ACTS, 1862 TO 1900.

Whereas by section 71 of the Companies Act, 1862, it is provided that the forms set forth in the second schedule thereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer, and that the Board of Trade may from time to time make such alterations in or additions to the forms contained in the said second schedule as it deems requisite.

And whereas the form E in the said schedule was altered by the Board of Trade by notice appearing in the London Gazette of the 14th April, 1885.

And whereas it is necessary to make further alterations in the said form in pursuance of section 19 of the Companies Act, 1900.

Now therefore the Board of Trade do hereby make the alterations in and additions to form E in the said second schedule, and in the said London Gazette of the 14th April, 1885, which appear in the form E hereinafter set forth (*n*), and such form, or a form as near thereto as circumstances admit, is the form to be used in making the list and summary of members and capital prescribed by section 26 of the Companies Act, 1862.

The Board of Trade further direct that the other forms hereinafter set forth shall be used for the purposes of the Companies Act, 1900.

COURTENAY BOYLE.

BOARD OF TRADE,
28th December, 1900.

FORM No. 6A (*n*).

Form 6A.

(*mm*) As to fees, see *infra*, pp. 1590—1.

(*n*) The form referred to has been superseded by the new form E to Schedule II. of the Companies Act, 1862, which is printed *ante*, p. 1339.

FORM No. 6B.

No. of certificate .

Names and addresses of the persons who are the directors of the Limited, on the day of 19 .

(Pursuant to § 19 (1) (b) of 63 & 64 Vict. c. 48.)

Names.	Addresses.
	Signature Description (*i.e.*, Manager or Secretary).

NOTE.—This list should be annexed to the annual return immediately after the list of members (*o*).

FORM No. 9.

No. of certificate .

THE COMPANIES ACTS, 1862 TO 1900.

A 5*s*. Companies' Registration Fee Stamp must be *impressed* here.

Copy of register of directors or managers of the company, .
Pursuant to sections 45 and 46 of 25 & 26 Vict. c. 89, and section 20 of 63 & 64 Vict. c. 48.

This notice should be signed by the secretary of the company.

Presented for filing by

Copy of the Register of Directors or Managers of the Company, and of any changes therein.

Names.	Addresses.	Occupations.	* Changes.
			(Signature)

* A complete list of the existing directors or managers should always be given. A note of the changes since the last list was filed should be made in this column, *e.g.*, by placing against a new director's name the words "in place of ," and by writing against any former director's name the words "dead," "resigned," or as the case may be.

(*o*) See *ante*, p. 1340.

FORM No. 41 (q).

No. of certificate .

COMPANIES ACTS, 1862 TO 1900.

A 5s. Companies' Registration Fee Stamp to be *impressed* here.

Declaration of compliance with the requisitions of the Companies Acts, made pursuant to § 1 (2) of the Companies Act, 1900 (63 & 64 Vict. c. 48) on behalf of a company proposed to be registered as the

Presented for filing by

I, , of , do solemnly and sincerely declare that I am (a) , of the Limited, and that all the requisitions of the Companies Acts in respect of matters precedent to the registration of the said company and incidental thereto have been complied with. And I make this solemn declaration conscientiously believing the same to be true and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at the day of one thousand nine hundred and before me , a commissioner for oaths.

(a) Here insert "a solicitor of the High Court engaged in the formation," *or* "a director or secretary named in the Articles of Association."

FORM No. 42 (r).

No. of certificate .

COMPANIES ACTS, 1862 TO 1900.

A 5s. Companies' Registration Fee Stamp to be *impressed* here.

Consent to act as director of the Limited, to be signed and filed pursuant to § 2 (1) (i) of the Companies Act, 1900 (63 & 64 Vict. c. 48).

Presented for filing by

To the registrar of Joint Stock Companies:—

(a) , the undersigned, hereby testify (b) consent to act as director of the Limited, pursuant to § 2 (1) (i) of the Companies Act, 1900.

(a) Here insert "I" *or* "we."

(b) Here insert "my" *or* "our."

* Signature.	† Address.	Description.

Dated this of 190 .

* If a director signs by "his agent authorized in writing," the authority must be produced and a copy filed.

(q) See *ante*, pp. 151, 152.

(r) See *ante*, p. 466.

APPENDIX VII.
Forms 42—44.

Section 2 (3) of the Companies Act, 1900, provides:—

"That this section shall not apply to a company registered before the commencement of this Act, or to a company which does not issue any invitation to the public to subscribe for its shares, or to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business."

FORM No. 43 (*s*).

No. of certificate .

COMPANIES ACTS, 1862 TO 1900.

A 5*s*. Companies' Registration Fee Stamp must be *impressed* here.

List of the persons who have consented to be directors of the Limited, to be delivered to the registrar pursuant to § 2 (2) of the Companies Act, 1900 (63 & 64 Vict. c. 48).

Presented for filing by .

To the registrar of Joint Stock Companies:—

(*a*) Here insert "I" *or* "we."

(*a*) , the undersigned, hereby give you notice, pursuant to § 2 (2) of the Companies Act, 1900, that the following persons have consented to be directors of the Limited.

Name.	Address.	Description.

Signature, address, and description of applicant for registration .

Dated this day of 190 .

Section 2 (3) of the Companies Act, 1900, provides:—

"That this section shall not apply to a company registered before the commencement of this Act, or to a company which does not issue any invitation to the public to subscribe for its shares, or to a prospectus issued by or on behalf of a company after the expiration of one year from the date at which the company is entitled to commence business."

FORM No. 44 (*t*).

No. of certificate .

COMPANIES ACTS, 1862 TO 1900.

A 5*s*. Companies' Registration Fee Stamp must be *impressed* here.

Declaration made on behalf of the Limited, that the conditions

(*s*) See *ante*, p. 466.

(*t*) See *ante*, pp. 209 and 230.

Form 44.

of § 6 (1) of the Companies Act, 1900 (63 & 64 Vict. c. 48) have been complied with.

Presented for filing by

I of being (a) of the Limited, do solemnly and sincerely declare:—

(a) Insert here "the secretary," or "a director."

That the amount of the share capital of the company offered to the public for subscription is £ .

That the amount fixed by the Memorandum or Articles of Association and named in the prospectus as the minimum subscription upon which the company may proceed to allotment is £ .

That shares held subject to the payment of the whole amount thereof in cash have been allotted to the amount of £ .

That every director of the company has paid to the company on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Statutory Declarations Act, 1835.

Declared at the day of one thousand nine hundred and before me

A Commissioner for Oaths.

Section 6 of the Companies Act, 1900, provides that:—

(1.) A company shall not commence any business or exercise any borrowing powers unless—

(a.) Shares held subject to the payment of the whole amount thereof in cash have been allotted to an amount not less in the whole than the minimum subscription; and

(b.) Every director of the company has paid to the company on each of the shares taken or contracted to be taken by him, and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription; and

(c.) There has been filed with the registrar a statutory declaration by the secretary or one of the directors, in the prescribed form, that the aforesaid conditions have been complied with.

(2.) The registrar shall, on the filing of this statutory declaration, certify that the company is entitled to commence business, and that certificate shall be conclusive evidence that the company is so entitled.

(3.) Any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date, and on that date it shall become binding.

(4.) Nothing in this section shall prevent the simultaneous offer for subscription of any shares and debentures or the receipt of any application.

(5.) If any company commences business or exercises borrowing powers in contravention of this section, every person who is responsible for the contravention shall, without prejudice to any other liability, be liable to a fine not exceeding fifty pounds for every day during which the contravention continues.

(6.) Nothing in this section shall apply to a company registered before the commencement of this Act.

APPENDIX VII. Forms 44—46.

(7.) This section shall not apply to any company where there is no invitation to the public to subscribe for its shares.

FORM No. 45 (*u*).

No. of Certificate .

COMPANIES ACTS, 1862 TO 1900.

Return of Allotments from the of 19 , to the of 19 , of the Limited.

Made pursuant to s. 7 (1) *of the Companies Act*, 1900.

(To be filed with the registrar within one month after the allotment is made.)

* Distinguish between Preference, Ordinary, &c.

*Number of the Shares allotted payable in cash ... ...
" " " " ... .
Nominal amount of the Shares so allotted ... ...
" " " " ... ...
Amount paid or due and payable on each such Share ... ...
" " " " ... ...
Number of Shares allotted for a consideration other than cash
Nominal amount of the Shares so allotted ... ...
Amount to be treated as paid on each such Share ... ...
The consideration for which such Shares have been allotted is as follows:—
Presented for filing by—

Names, Addresses, and Descriptions of the Allottees.

Surname.	Christian Name.	Address.	Description.	Number of Shares allotted.

FORM No. 46 (*x*).

No. of Certificate .

COMPANIES ACTS, 1862 TO 1900.

A 5*s*. Companies' Registration Fee Stamp must be *impressed* here.

Report pursuant to § 12 of the Companies Act, 1900 (63 & 64 Vict. c. 48) of the Limited, to be certified by not less than two directors, or by one director or manager whenever there is only one, and forwarded at least seven days before the statutory meeting to every member of the

(*u*) See *ante*, pp. 41 to 43. (*x*) See *ante*, pp. 467, 468, and 474.

company; and to be filed with the registrar forthwith after the sending thereof to the members of the company (§ 12 (4)).

NOTE.—This form has been provided for the purpose of indicating the nature of the information that is required; but as the report to be filed must be a copy of that sent to the shareholders, all that is contained in that report must appear in this.

(a.) The total number of shares allotted is of which are allotted (*a*) in consideration of and upon each of the remaining shares the sum of has been paid in cash.

(b.) The total amount of cash received by the company in respect of the shares issued wholly for cash is £ and on the shares issued partly for cash is £ .

(c.) The receipts and payments of the company on capital account to the date of this report are as follows:—

(*a*) Here state as "fully paid up" *or* "paid up otherwise than in cash to the extent of per share."

Particulars of Receipts.				Particulars of Payments.			

Presented for filing by—

The following is an account (or estimate) of the preliminary expenses of the company.

(d.) Names, addresses, and descriptions of the directors, auditors (if any), manager (if any), and secretary of the company.

DIRECTORS.

Surname.	Christian Name.	Address.	Description.

AUDITORS.

MANAGER.

SECRETARY.

(e.) Particulars of any contract the modification of which is to be submitted to the meeting for its approval, together with the particulars of the modification or proposed modification.

We hereby certify this report.

} Two Directors.

We hereby certify that so much of this report as relates to the shares allotted by the company and to the cash received in respect of such shares and to the receipts and payments of the company on capital account is correct.

} Auditors.

FORM No. 47 (*y*).

No. of Certificate .

COMPANIES ACTS, 1862 TO 1900.

Particulars to be supplied to the registrar pursuant to § 14 (7) of the Companies Act, 1900 (63 & 64 Vict. c. 48), of a mortgage or charge created by the Limited, and being:—

*(a.) A mortgage or charge for the purpose of securing any issue of debentures; or

(b.) A mortgage or charge on uncalled capital of the company; or

(c.) A mortgage or charge created or evidenced by an instrument, which, if executed by an individual, would require registration as a bill of sale; or

(d.) A floating charge on the undertaking or property of the company.

* Strike out the Sub-heads (a.), (b.), (c.), or (d.), which do not apply.

(NOTE.—The original instrument evidencing the mortgage or charge must be presented with this return within twenty-one days after the date of its creation (§ 14) (1), accompanied by the particulars set out on this form.)

Presented for filing by .

(*y*) See *ante*, pp. 310 *et seq.*

Form 47.

Particulars of a mortgage or charge created by the Limited.

(1) Date of creation of the Mortgage or Charge; or, in the case of a series of Debentures, the date of the Covering Deed (if any) by which the Security is created or defined.	(2) Amount secured by the Mortgage or Charge; or, in the case of a series of Debentures, the total amount secured by the whole series.	(3) Dates of Resolutions creating the series of Debentures.	(4) Short particulars of the Property Mortgaged or Charged; or, in the case of a series of Debentures, a General Description of the Property Charged.	(5) Names (with Addresses and Descriptions) of the Mortgagees or Persons entitled to the Charge; or, in the case of a series of Debentures, the names, &c., of the Trustees (if any) for the Debenture-holders.	(6) Where more than one issue of Debentures in same series.		
					Date of present issue.	Amount of present issue.	Total amount previously issued of this series (if any).
					Signature		

Section 14 of the Companies Act, 1900 (63 & 64 Vict. c. 48), provides, *inter alia*, that:—

Mortgages and Charges.

(1.) Every mortgage or charge created by a company after the commencement of this Act and being either—

(a) A mortgage or charge for the purpose of securing any issue of debentures; or

(b) A mortgage or charge on uncalled capital of the company; or

(c) A mortgage or charge created or evidenced by an instrument which, if executed by an individual, would require registration as a bill of sale; or

(d) A floating charge on the undertaking or property of the company, shall, so far as any security on the company's property or undertaking is thereby conferred, be void against the liquidator and any creditor of the company, unless filed with the registrar for registration in manner required by this Act within twenty-one days after the date of its creation, but without prejudice to any contract or obligation for repayment of the money thereby secured.

(4.) Provided that where a series of debentures containing any charge to the benefit of which the debenture holders of that series are entitled *pari passu* is created by a company, it shall be sufficient to enter on the register—

(a) The total amount secured by the whole series; and

(b) The dates of the resolutions creating the series and of the covering deed, if any, by which the security is created or defined; and

(c) A general description of the property charged; and

(d) The names of the trustees, if any, for the debenture holders.

(5.) Where more than one issue is made of debentures in the same series, the company may require the registrar to enter on the register

APPENDIX VII.

Forms 47 and 49.

the date and amount of any particular issue, but an omission to do this shall not affect the validity of the debentures issued.

(6.) The registrar shall give a certificate under his hand of the registration of any mortgage or charge registered in pursuance of this section, stating the amount thereby secured (which certificate shall be conclusive evidence that the requirements of this section as to registration have been complied with), and the company shall cause a copy of the certificate so given to be endorsed on every debenture or certificate of debenture stock which is issued by the company, and the payment of which is secured by the mortgage or charge so registered.

(7.) It shall be the duty of the company to register every mortgage or charge created by the company and requiring registration under this section, and for that purpose to supply the registrar with the particulars required for registration; but any such mortgage or charge may be registered on the application of any person interested therein.

Section 18 provides that:—

If any company makes default in complying with the requirements of this Act as to the registration of any mortgage or charge created by the company, the company and every director, manager, and other officer of the company, who knowingly and wilfully authorized or permitted such default shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds; and if any person knowingly and wilfully authorizes or permits the delivery of any debenture or certificate of debenture stock required by this Act to be registered, without a copy of the certificate of the registrar being endorsed upon it, he shall, without prejudice to any other liability, be liable on summary conviction to a fine not exceeding one hundred pounds.

FORM No. 49 (z).

No. of Certificate .

COMPANIES ACTS, 1862 TO 1900.

Memorandum of satisfaction of mortgage or charge created by the Limited, to be entered on the register pursuant to § 16 of the Companies Act, 1900 (63 & 64 Vict. c. 48).

Presented for filing by

To the Registrar of Joint Stock Companies.

The Limited hereby gives notice that the (a) dated the day of one thousand nine hundred and , and created by the company for securing the sum of £ was satisfied to the extent of £ on the of 190 .

(a) Insert here "mortgage" *or* "charge," "debentures" *or* "debenture stock," *as the case may be.*

In witness whereof the common seal of the company was hereunto affixed the day of one thousand nine hundred and in the presence of

} Directors.

Secretary.

L. S.

(z) See *ante*, p. 313.

FORM No. 50 (*a*).

Certificate No. .

COMPANIES ACTS, 1862 TO 1900.

A Companies Fee Stamp of 5*s*. should be *impressed* here.

COMPANY LIMITED BY SHARES.

Application for a Certificate of Incorporation to be filed by a Company which does not issue any invitation to the public to subscribe to its Shares. (Sect. 2 (3) of the Companies Act, 1900.)

Name of proposed Company—

Limited.

Presented for filing by

COMPANY LIMITED BY SHARES.

Application by the Subscribers to the Memorandum of Association of Company, Limited, being a Company such as is specified in section 2 (3) of the Companies Act, 1900, and which does not issue any invitation to the public to subscribe for its Shares, for a Certificate of Incorporation as a Limited Company under the Companies Acts, 1862 to 1900.

We, the several persons whose names are subscribed, hereby declare that the Company, Limited, whose Memorandum of Association is delivered herewith, does not issue any invitation to the public to subscribe for its Shares.

Names, Addresses, and Descriptions of Subscribers.

Dated this day of , 190 .

Witness to the above signatures—

ORDER OF BOARD OF TRADE RELATING TO FORMS UNDER THE COMPANIES ACTS, 1862 TO 1900. (DATED 15th AUGUST, 1901.) (*aa*).

THE COMPANIES ACTS, 1862 TO 1900.

Whereas by section 71 of the Companies Act, 1862, it is provided that the forms set forth in the second schedule thereto, or forms as near thereto as circumstances admit, shall be used in all matters to which such forms refer, and that the Board of Trade may from time to time make such alterations in or additions to the forms contained in the said second schedule as it deems requisite:

And whereas the Form E in the said schedule was altered by the Board of Trade by notice appearing in the London Gazette of the 14th April, 1885:

And whereas, in pursuance of section 19 of the Companies Act, 1900, the Form E in the said schedule was further altered by the Board of Trade by an Order dated the 28th December, 1900, a copy of which Order with Form E as so altered appeared in the London Gazette of the 1st January, 1901:

(*a*) See *ante*, p. 152, and *infra*, p. 1570, Form No. 51.

(*aa*) As to fees, see *infra*, p. 1591.

APPENDIX VII.

Now therefore the Board of Trade do hereby make further alterations in and additions to the said Form E so that it shall now read as set out in the Form E hereinafter set forth, and such form, or a form as near thereto as circumstances admit, is the form to be used in making the list and summary of members and capital prescribed by section 26 of the Companies Act, 1862 (*b*):

And whereas by the said Order of the 28th December, 1900, the Board of Trade directed that certain other forms should be used for the purposes of the Companies Act, 1900:

Now therefore the Board of Trade further direct that the form hereinafter set forth shall also be used for the purposes of the Companies Act, 1900.

Board of Trade, 15th August, 1901.

FRANCIS J. S. HOPWOOD.

FORM No. 51.

Form 51.

Certificate No.

COMPANIES ACTS, 1862 TO 1900.

A Companies Fee Stamp of 5s. should be *impressed* here.

Company Limited by Shares.

*Application for a Certificate of Incorporation to be filed by a Company

* This form of application is only to be used where the company does not deliver a statement that it does not issue any invitation to the public to subscribe for its shares (§ 2 (3) of the Companies Act, 1900).

which does not deliver a List of Persons who have consented to be directors of the Company (§ 2 (2) of the Companies Act, 1900) (*c*).

Name of proposed Company— Limited.

Presented for filing by—

Company Limited by Shares.

Application by the Subscribers to the Memorandum of Association of Company, Limited, being a Company which does not deliver a List of Persons who have consented to be Directors of the Company, for a Certificate of Incorporation as a Limited Company under the Companies Acts, 1862 to 1900.

We, the several persons whose names are subscribed, hereby declare that the Company, Limited, whose Memorandum of Association is delivered herewith, cannot deliver a list of persons who have consented to be Directors of the Company, pursuant to § 2 (2) of the Companies Act, 1900, because *

* Here state the reason, *e.g.*, "No directors have been named or appointed."

Name, Addresses, and Descriptions of Subscribers.

Dated this day of , 190 .

Witness to the above Signatures—

(*b*) This form is printed in the Second Schedule to the Comp. Act, 1862, *ante*, pp. 1339, 1340. See, too, Form No. 6B, *ante*, p. 1560.

(*c*) See *ante*, p. 1562, Form No. 43. See, too, p. 1569, Form No. 50.

THE HIGH COURT.

ORDER OF THE LORD CHANCELLOR APPOINTING BYRNE AND BUCKLEY, JJ., TO EXERCISE THE WINDING-UP JURISDICTION OF THE HIGH COURT OF JUSTICE, CHANCERY DIVISION.

TRANSFER OF BUSINESS UNDER COMPANIES (WINDING-UP) ACT, 1890.

ORDER OF COURT.

Monday, the 16th day of December, 1901.

Whereas, by the order dated the 6th day of November, 1897, I did order that on and after the 2nd day of November, 1897, the jurisdiction of the High Court, under the Companies (Winding-up) Act, 1890, should, until further order, be exercised by the Honourable Mr. Justice Wright, sitting and acting for the purpose of the exercise of such jurisdiction as an additional judge of the Chancery Division, and that the said judge should on and after the day aforesaid and until further order be the judge of the High Court assigned for the purpose of the exercise of that jurisdiction pursuant to the Companies (Winding-up) Act, 1890. Now, therefore, I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, do hereby by virtue of the powers vested in me by section 2 of the Companies (Winding-up) Act, 1890, section 5 of the Supreme Court of Judicature Act, 1884, and all other powers enabling me in that behalf, order that on and after the 10th day of January, 1902, the jurisdiction of the High Court under the Companies (Winding-up) Act, 1890, shall until further order be exercised by the Honourable Mr. Justice Byrne and the Honourable Mr. Justice Buckley, and that the said judges shall until further order be the judges of the High Court assigned for the purpose of the exercise of that jurisdiction pursuant to the Companies (Winding-up) Act, 1890. And I do further order that all matters and actions in the Chancery Division which are on the 10th day of January, 1902, pending before Mr. Justice Wright be transferred and assigned to the said Mr. Justice Byrne and Mr. Justice Buckley (*a*).

HALSBURY, C.

(*a*) As to the former Orders, see *ante*, p. 829, note (*k*).

APPENDIX VII.

Order.

COUNTY COURT, ENGLAND.

JURISDICTION.

ORDER UNDER THE STANNARIES COURT (ABOLITION) ACT, 1896 (*b*).
DATED DECEMBER 16, 1896.

I, Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, by virtue of the Stannaries Court (Abolition) Act, 1896, and all other powers enabling me in that behalf, do hereby order as follows:—

1. The County Courts of Cornwall shall be the courts to and in which the jurisdiction and powers of the Stannaries Court are by the said Act transferred and vested.

2. Anything required to be done by, to, or before the registrar or any clerk of the Stannaries Court shall be done by, to, or before the registrar or any clerk of any of the county courts aforesaid.

3. All proceedings pending in the Stannaries Court at the commencement of the Act shall be transferred to the County Court held at Truro to be there completed in the same manner as if the said Act had not passed.

4. The place of sitting for the exercise of any of the jurisdiction—

(1) of the judge shall be at Truro, unless in any case he shall, on the ground that some other place will be more convenient for the suitors, otherwise direct;

(2) of the registrar shall be at the court where the proceedings shall have been commenced, unless in any case the judge shall, for the convenience of parties, otherwise direct.

5. Notwithstanding anything in these rules, the jurisdiction and powers of the Stannaries Court in regard to the winding-up of companies, and to all cases where the subject matter is not within the limits of the county court jurisdiction, shall be exclusively exercised by the Court having bankruptcy jurisdiction in Cornwall (*c*).

6. The property, rooms, and building mentioned in section 1 (2) (d) of the Act shall be used and disposed of as may be agreed upon between the judge of the County Courts of Cornwall and the Corporation of Truro, subject to the approval of the Lord Chancellor.

7. Arrangements for the custody of the records in the same section mentioned shall be made by the Corporation of Truro, in consultation with the Judge of the County Court, subject to the approval of the Lord Chancellor.

8. This order shall come into operation on the 1st of January, 1897 (*d*).

The sixteenth day of December, 1896.

HALSBURY, C.

(*b*) See *ante*, pp. 1394 *et seq.*

(*c*) See the County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, 1899, p. 1582.

(*d*) The practice of the County Court exercising the Stannaries jurisdiction is regulated by the County Court Stannaries Jurisdiction Rules, 1897, which are incoporated in the County Court Rules as Order LC.

COUNTY COURT, ENGLAND.

JURISDICTION.

THE COUNTY COURTS (BANKRUPTCY AND COMPANIES WINDING-UP) JURISDICTION ORDER, 1899. DATED MAY 19, 1899 (*e*).

I, the Right Honourable Hardinge Stanley, Earl of Halsbury, Lord High Chancellor of Great Britain, do by virtue of the powers vested in me by section 92 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52), section 1 of the Companies Winding-up Act, 1890 (53 & 54 Vict. c. 63), and of all other powers enabling me in that behalf hereby order as follows:—

1. This order may be cited as "The County Courts (Bankruptcy and Companies Winding-up) Jurisdiction Order, 1899."

2. In and for the purposes of this order—

"Court district" means the district of a county court as constituted by "The County Courts (Districts) Order in Council, 1899," or any order amending the same.

3. The county courts specified in the first column of the first schedule hereto shall be and they are hereby excluded from having jurisdiction in bankruptcy in respect of any matter or proceeding had or taken under the Bankruptcy Act, 1869 (32 & 33 Vict. c. 71), the Bankruptcy Act, 1883, or any Acts amending the same.

4. For the purposes of bankruptcy jurisdiction the districts of such last-named courts shall be attached to the county courts, the names of which are respectively specified in the second column of the first schedule opposite to the names of the respective county courts excluded hereby from bankruptcy jurisdiction.

5. Such county courts as are by this order excluded from having jurisdiction in bankruptcy shall be excluded from having jurisdiction under the Companies (Winding-up) Act, 1890, and the district of any such court shall for the purposes of jurisdiction under the Companies (Winding-up) Act, 1890, be attached to the court to which that district is by this order attached for the purposes of jurisdiction in bankruptcy.

6. The orders specified in the second schedule hereto are hereby repealed as regards each county court and court district to which the said orders apply as from the coming into operation of this order as to such county court or court district.

7. Nothing in this order shall affect or alter the limits of the London Bankruptcy District or the jurisdiction therein of the High Court in bankruptcy or in the winding-up of companies, and nothing in this order shall confer any jurisdiction on county courts within the said London Bankruptcy District (*ee*).

8. This order shall, as regards each county court or court district, come into operation at the day on which "The County Court (Districts) Order in Council, 1899," comes into operation as to such county court or court district: Provided that where any order of the Lord Chancellor is made

(*e*) This order is printed as amended by an order dated the 16th June, 1899.

(*ee*) See *ante*, pp. 828, 829.

APPENDIX VII. Schedule I.

under article 7 of the said County Courts (Districts) Order in Council, 1899 (*f*), this article shall have effect subject to any such order of the Lord Chancellor.

SCHEDULE I.

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Northumberland, held at Alnwick, Belford, Berwick, Hexham, and Bellingham, Morpeth and Blyth, North Shields, Rothbury, and Wooler; and the County Court of Durham, held at Consett, Gateshead, and South Shields and Jarrow.	The County Court of Northumberland, held at Newcastle-upon-Tyne, in Circuit 1.
The County Court of Durham, held at Seaham Harbour, and West Hartlepool.	The County Court of Durham, held at Sunderland, in Circuit 2.
The County Court of Durham, held at Bishops Auckland, and Wolsingham.	The County Court of Durham, held at Durham, in Circuit 2.
The County Court of Northumberland, held at Haltwhistle and Alston; and the County Court of Cumberland, held at Brampton, Penrith, and Wigton.	The County Court of Cumberland, held at Carlisle, in Circuit 3.
The County Court of Cumberland, held at Keswick.	The County Court of Cumberland, held at Cockermouth, in Circuit 3.
The County Court of Cumberland, held at Millom.	The County Court of Cumberland, held at Whitehaven, in Circuit 3.
The County Court of Westmoreland, held at Ambleside, Appleby, and Kirkby-Lonsdale.	The County Court of Westmoreland, held at Kendal, in Circuit 3.
The County Court of Lancashire, held at Blackpool, Garstang, Kirkham, and Lancaster.	The County Court of Lancashire, held at Preston, in Circuit 4.
The County Court of Lancashire, held at Clitheroe, and Haslingden and Accrington.	The County Court of Lancashire, held at Blackburn, in Circuit 4.
The County Court of Lancashire, held at Bury, Chorley, and Leigh.	The County Court of Lancashire, held at Bolton, in Circuit 5.
The County Court of Lancashire, held at Bacup and Rawtenstall.	The County Court of Lancashire, held at Rochdale, in Circuit 5.
The County Court of Yorkshire, held at Saddleworth.	The County Court of Lancashire, held at Oldham, in Circuit 5.
The County Court of Lancashire, held at Ormskirk and Southport, and St. Helens and Widnes.	The County Court of Lancashire, held at Liverpool, in Circuit 6.

(*f*) This order is printed by the Queen's Printers as Statutory Rules and Orders, 1899, No. $\frac{178}{L. 3}$, as amended by Nos. $\frac{247}{L. 10}$, $\frac{528}{L. 25}$, $\frac{571}{L. 26}$, and $\frac{836}{L. 37}$. It came into operation, as to each Court district or town, on 1st July, 1899, subject to any order of the Lord Chancellor postponing its commencement. See Statutory Rules and Orders, 1899, Part I., pp. 322 *et seq.*

SCHEDULE I.—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Cheshire, held at Runcorn.	The County Court of Lancashire, held at Warrington, in Circuit 7.
The County Court of Cheshire, held at Altrincham.	The County Court of Lancashire, held at Manchester, in Circuit 8.
The County Court of Cheshire, held at Hyde; and the County Court of Derbyshire, held at Glossop.	The County Court of Lancashire, held at Ashton-under-Lyne, in Circuit 9.
The County Court of Cheshire, held at Northwich and Winsford; and the County Court of Shropshire, held at Market-Drayton, and Whitchurch.	The County Court of Cheshire, held at Nantwich and Crewe, in Circuit 9.
The County Court of Derbyshire, held at Buxton, Chapel-en-le-Frith and New Mills.	The County Court of Cheshire, held at Stockport, in Circuit 9.
The County Court of Cheshire, held at Congleton and Sandbach; and the County Court of Staffordshire, held at Leek.	The County Court of Cheshire, held at Macclesfield, in Circuit 9.
The County Court of Yorkshire, held at Keighley, Settle and Skipton.	The County Court of Yorkshire, held at Bradford, in Circuit 11.
The County Court of Lancashire, held at Colne; and the County Court of Yorkshire, held at Todmorden.	The County Court of Lancashire, held at Burnley, in Circuit 11.
The County Court of Yorkshire, held at Holmfirth.	The County Court of Yorkshire, held at Huddersfield, in Circuit 12.
The County Court of Yorkshire, held at Doncaster, Rotherham, and Thorne; and the County Court of Nottinghamshire, held at Worksop.	The County Court of Yorkshire, held at Sheffield, in Circuit 13.
The County Court of Yorkshire, held at Goole, and Pontefract.	The County Court of Yorkshire, held at Wakefield, in Circuit 14.
The County Court of Yorkshire, held at Otley.	The County Court of Yorkshire, held at Leeds, in Circuit 14.
The County Court of Durham, held at Barnard-Castle, and Darlington.	The County Court of Durham, held at Stockton-on-Tees, in Circuit 15.
The County Court of Yorkshire, held at Stokesley and Guisborough, and Whitby.	The County Court of Yorkshire, held at Middlesborough, in Circuit 15.
The County Court of Yorkshire, held at Easingwold, Knaresborough, Pocklington, Selby, and Tadcaster.	The County Court of Yorkshire, held at York, in Circuit 15.
The County Court of Yorkshire, held at Helmsley, Leyburn, Richmond, Ripon, and Thirsk.	The County Court of Yorkshire, held at Northallerton, in Circuit 15.
The County Court of Yorkshire, held at Bridlington and New Malton.	The County Court of Yorkshire, held at Scarborough, in Circuit 16.
The County Court of Yorkshire, held at Beverley, Great Driffield, Hedon, and Howden.	The County Court of Yorkshire, held at Kingston-on-Hull, in Circuit 16.
The County Court of Lincolnshire, held at Barton-on-Humber, Brigg, Caistor, and Louth.	The County Court of Lincolnshire, held at Great Grimsby, in Circuit 17.

APPENDIX VII.

Schedule I.

SCHEDULE I.—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Nottinghamshire, held at East Retford; and the County Court of Lincolnshire, held at Gainsborough, Horncastle, and Market Rasen.	The County Court of Lincolnshire, held at Lincoln, in Circuit 17.
The County Court of Lincolnshire, held at Sleaford, and Spilsby.	The County Court of Lincolnshire, held at Boston, in Circuit 17.
The County Court of Nottinghamshire, held at Bingham, Mansfield, and Newark; and the County Court of Lincolnshire, held at Grantham.	The County Court of Nottinghamshire, held at Nottingham, in Circuit 18.
The County Court of Derbyshire, held at Alfreton, Bakewell, Belper and Ilkeston, and Wirksworth and Matlock.	The County Court of Derbyshire, held at Derby, in Circuit 19.
The County Court of Derbyshire, held at Ashbourne; and the County Court of Leicestershire, held at Ashby-de-la-Zouch; and the County Court of Staffordshire, held at Uttoxeter.	The County Court of Staffordshire, held at Burton-on-Trent, in Circuit 19.
The County Court of Leicestershire, held at Hinckley, Loughborough, Lutterworth, Market-Bosworth, Market-Harborough, and Melton-Mowbray; and the County Court of Rutlandshire, held at Oakham, and Uppingham.	The County Court of Leicestershire, held at Leicester, in Circuit 20.
The County Court of Warwickshire, held at Atherstone, and Solihull; the County Court of Staffordshire, held at Tamworth; and the County Court of Worcestershire, held at Redditch.	The County Court of Warwickshire, held at Birmingham, in Circuit 21.
The County Court of Warwickshire, held at Nuneaton, and Rugby.	The County Court of Warwickshire, held at Coventry, in Circuit 22.
The County Court of Warwickshire, held at Alcester, Southam, and Stratford-on-Avon.	The County Court of Warwickshire, held at Warwick, in Circuit 22.
The County Court of Shropshire, held at Cleobury-Mortimer; and the County Court of Worcestershire, held at Tenbury.	The County Court of Worcestershire, held at Kidderminster, in Circuit 23.
The County Court of Worcestershire, held at Bromsgrove, Droitwich, Evesham, Great Malvern, and Pershore; and the County Court of Hertfordshire, held at Bromyard, and Ledbury.	The County Court of Worcestershire, held at Worcester, in Circuit 23.
The County Court of Glamorganshire, held at Barry, and Bridgend.	The County Court of Glamorganshire, held at Cardiff, in Circuit 24.
The County Court of Monmouthshire, held at Chepstow, Monmouth, Pontypool and Usk.	The County Court of Monmouthshire, held at Newport, in Circuit 24.

SCHEDULE I.—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Monmouthshire, held at Abergavenny and Blanavon; and the County Court of Brecknockshire, held at Crickhowell.	The County Court of Monmouthshire, held at Tredegar, in Circuit 24.
The County Court of Staffordshire, held at Lichfield.	The County Court of Staffordshire, held at Walsall, in Circuit 25.
The County Court of Staffordshire, held at Burslem, Newcastle-under-Lyme, and Tunstall.	The County Court of Staffordshire, held at Hanley, in Circuit 26.
The County Court of Staffordshire, held at Cheadle.	The County Court of Staffordshire, held at Stoke-upon-Trent and Longton, in Circuit 26.
The County Court of Staffordshire, held at Rugeley, and Stone; and the County Court of Shropshire, held at Newport.	The County Court of Staffordshire, held at Stafford, in Circuit 26.
The County Court of Shropshire, held at Wem.	The County Court of Shropshire, held at Shrewsbury, in Circuit 27.
The County Court of Shropshire, held at Bridgnorth, and Wellington.	The County Court of Shropshire, held at Madeley, in Circuit 27.
The County Court of Brecknockshire, held at Hay; and the County Court of Herefordshire, held at Ross.	The County Court of Herefordshire, held at Hereford, in Circuit 27.
The County Court of Shropshire, held at Bishops-Castle, and Ludlow; the County Court of Herefordshire, held at Kington; and the County Court of Radnorshire, held at Knighton, and Presteigne.	The County Court of Herefordshire, held at Leominster, in Circuit 27.
The County Court of Brecknockshire, held at Builth; the County Court of Radnorshire, held at Rhayader and Llandrindod-Wells; and the County Court of Montgomeryshire, held at Llanfyllin, Llanidloes, and Welshpool.	The County Court of Montgomeryshire, held at Newtown, in Circuit 28.
The County Court of Cardiganshire, held at Aberayron; the County Court of Merionethshire, held at Dolgelly; and the County Court of Montgomeryshire, held at Machynlleth.	The County Court of Cardiganshire, held at Aberystwith, in Circuit 28.
The County Court of Carnarvonshire, held at Pwllheli; and the County Court of Denbighshire, held at Llanrwst.	The County Court of Carnarvonshire, held at Portmadoc and Festiniog, in Circuit 28.
The County Court of Denbighshire, held at Denbigh; the County Court of Flintshire, held at St. Asaph and Rhyl; the County Court of Carnarvonshire, held at Carnarvon, and Conway and Llandudno; and the County Court of Anglesey, held at Holyhead, Llangefni and Menai Bridge.	The County Court of Carnarvonshire, held at Bangor, in Circuit 29.

SCHEDULE I.—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Merionethshire, held at Bala, and Corwen; the County Court of Denbighshire, held at Ruthin; and the County Court of Shropshire, held at Oswestry.	The County Court of Denbighshire, held at Wrexham, in Circuit 29.
The County Court of Flintshire, held at Mold and Flint, and Holywell.	The County Court of Cheshire, held at Chester, in Circuit 29.
The County Court of Brecknockshire, held at Brecknock.	The County Court of Glamorganshire, held at Merthyr Tydfil, in Circuit 30.
The County Court of Carmarthenshire, held at Llandilo Fawr, Llandovery, Llanelly, and Newcastle-in-Emlyn; and the County Court of Cardiganshire, held at Cardigan, and Lampeter.	The County Court of Carmarthenshire, held at Carmarthen, in Circuit 31.
The County Court of Pembrokeshire, held at Haverfordwest, and Narberth.	The County Court of Pembrokeshire, held at Pembroke Dock, in Circuit 31.
The County Court of Norfolk, held at Attleborough and Watton, Aylsham, East-Dereham, Holt, Little-Walsingham and Fakenham, North-Walsham, Thetford, and Wymondham.	The County Court of Norfolk, held at Norwich, in Circuit 32.
The County Court of Norfolk, held at Downham-Market, and Swaffham; the County Court of Cambridgeshire, held at Wisbech; and the County Court of Lincolnshire, held at Holbeach.	The County Court of Norfolk, held at King's Lynn, in Circuit 32.
The County Court of Suffolk, held at Mildenhall, and Stowmarket.	The County Court of Suffolk, held at Bury St. Edmunds, in Circuit 33.
The County Court of Suffolk, held at Diss and Eye, Framlingham and Saxmundham, Hadleigh, and Woodbridge, and Felixstowe; and the County Court of Norfolk, held at Harleston.	The County Court of Suffolk, held at Ipswich, in Circuit 33.
The County Court of Suffolk, held at Beccles and Bungay, Halesworth and Lowestoft.	The County Court of Norfolk, held at Great Yarmouth, in Circuit 33.
The County Court of Lincolnshire, held at Bourne, Spalding, and Stamford; the County Court of Northamptonshire, held at Oundle; the County Court of Cambridgeshire, held at March; and the County Court of Huntingdonshire, held at Huntingdon.	The County Court of Northamptonshire, held at Peterborough, in Circuit 35.

SCHEDULE I.—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Cambridgeshire, held at Ely, Newmarket, and Soham; the County Court of Hertfordshire, held at Royston; the County Court of Essex, held at Saffron Walden; and the County Court of Suffolk, held at Haverhill.	The County Court of Cambridgeshire, held at Cambridge, in Circuit 35.
The County Court of Bedfordshire, held at Ampthill, and Biggleswade; and the County Court of Huntingdonshire, held at St. Neotts.	The County Court of Bedfordshire, held at Bedford, in Circuit 35.
The County Court of Northamptonshire, held at Daventry, Kettering, Thrapston, Towcester, and Wellingborough; and the County Court of Buckinghamshire, held at Newport-Pagnell.	The County Court of Northamptonshire, held at Northampton, in Circuit 36.
The County Court of Oxfordshire, held at Bicester, Chipping-Norton, Witney, and Woodstock; and the County Court of Berkshire, held at Abingdon, Wallingford, and Wantage.	The County Court of Oxfordshire, held at Oxford, in Circuit 36.
The County Court of Buckinghamshire, held at Buckingham; the County Court of Northamptonshire, held at Brackley; and the County Court of Worcestershire, held at Shipston-on-Stour.	The County Court of Oxfordshire, held at Banbury, in Circuit 36.
The County Court of Oxfordshire, held at Thame; and the County Court of Buckinghamshire, held at Chesham, and High Wycombe.	The County Court of Buckinghamshire, held at Aylesbury, in Circuit 37.
The County Court of Bedfordshire, held at Leighton Buzzard; and the County Court of Hertfordshire, held at Hitchin.	The County Court of Bedfordshire, held at Luton, in Circuit 37.
The County Court of Hertfordshire, held at Watford.	The County Court of Hertfordshire, held at St. Alban's, in Circuit 37.
The County Court of Middlesex, held at Uxbridge.	The County Court of Berkshire, held at Windsor, in Circuit 37.
The County Court of Essex, held at Braintree, Brentwood, Dunmow, Grays Thurrock, Maldon, Romford, and Southend.	The County Court of Essex, held at Chelmsford, in Circuit 38.
The County Court of Essex, held at Halstead, and Harwich; and the County Court of Suffolk, held at Sudbury.	The County Court of Essex, held at Colchester, in Circuit 38.

APPENDIX VII.

Schedule I.

SCHEDULE I.—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Essex, held at Waltham Abbey; and the County Court of London, held at Clerkenwell, in respect of the business arising outside the London Bankruptcy District.	The County Court of Middlesex, held at Edmonton, in Circuit 38.
The County Court of Hertfordshire, held at Bishop Stortford.	The County Court of Hertfordshire, held at Hertford, in Circuit 38.
The County Court of Kent, held at Bromley; and the County Court of Surrey, held at Dorking, Epsom, and Redhill.	The County Court of Surrey, held at Croydon, in Circuit 45.
The County Court of Surrey, held at Farnham and Aldershot.	The County Court of Surrey, held at Guildford, in Circuit 45.
The County Court of Surrey, held at Chertsey.	The County Court of Surrey, held at Kingston, in Circuit 45.
The County Court of Berkshire, held at Hungerford.	The County Court of Berkshire, held at Newbury, in Circuit 45.
The County Court of Oxfordshire, held at Henley-on-Thames.	The County Court of Berkshire, held at Reading, in Circuit 45.
The County Court of Surrey, held at Richmond.	The County Court of London, held at Wandsworth, in Circuit 45.
The County Court of London, held at Woolwich.	The County Court of London, held at Greenwich, in Circuit 47.
The County Court of Kent, held at Seven Oaks, and Tonbridge; and the County Court of Sussex, held at East Grinstead.	The County Court of Kent, held at Tunbridge Wells, in Circuit 48.
The County Court of Kent, held at Ashford, Deal and Sandwich, Dover, Faversham, Folkestone, Hythe, Margate, and Ramsgate.	The County County of Kent, held at Canterbury, in Circuit 49.
The County Court of Kent, held at Dartford, Gravesend, Sheerness, and Sittingbourne.	The County Court of Kent, held at Rochester, in Circuit 49.
The County Court of Sussex, held at Arundel, Chichester, Haywards-Heath, Horsham, Midhurst, Petworth, and Worthing.	The County Court of Sussex, held at Brighton, in Circuit 50.
The County Court of Kent, held at Romney, and Tenterden and Cranbrook; and the County Court of Sussex, held at Rye.	The County Court of Sussex, held at Hastings, in Circuit 50.
The County Court of Hampshire, held at Petersfield.	The County Court of Hampshire, held at Portsmouth, in Circuit 51.
The County Court of Hampshire, held at Bishop's Waltham, Lymington, and Romsey.	The County Court of Hampshire, held at Southampton, in Circuit 51.
The County Court of Hampshire, held at Alton, and Basingstoke.	The County Court of Hampshire, held at Winchester, in Circuit 51.
The County Court of Wiltshire, held at Warminster, and Westbury.	The County Court of Somersetshire, held at Frome, in Circuit 52.

SCHEDULE I.—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Wiltshire, held at Calne, Malmesbury, and Marlborough; the County Court of Gloucestershire, held at Cirencester; and the County Court of Berkshire, held at Faringdon.	The County Court of Wiltshire, held at Swindon, in Circuit 52.
The County Court of Wiltshire, held at Bradford and Trowbridge, Chippenham, Devizes, and Melksham.	The County Court of Somersetshire, held at Bath, in Circuit 52.
The County Court of Gloucestershire, held at Northleach, Stow-on-the-Wold, Tewkesbury, and Winchcomb.	The County Court of Gloucestershire, held at Cheltenham, in Circuit 53.
The County Court of Gloucestershire, held at Dursley, Newent, Newnham, and Stroud.	The County Court of Gloucestershire, held at Gloucester, in Circuit 53.
The County Court of Gloucestershire, held at Chipping-Sodbury, and Thornbury.	The County Court of Gloucestershire, held at Bristol, in Circuit 54.
The County Court of Somersetshire, held at Axbridge, and Temple-Cloud.	The County Court of Somersetshire, held at Wells, in Circuit 54.
The County Court of Dorsetshire, held at Blandford, Bridport, and Weymouth.	The County Court of Dorsetshire, held at Dorchester, in Circuit 55.
The County Court of Dorsetshire, held at Wareham, and Wimborne-Minster; and the County Court of Hampshire, held at Christchurch and Bournemouth.	The County Court of Dorsetshire, held at Poole, in Circuit 55.
The County Court of Hampshire, held at Andover, and Fordingbridge and Ringwood; and the County Court of Dorsetshire, held at Shaftesbury.	The County Court of Wiltshire, held at Salisbury, in Circuit 55.
The County Court of Somersetshire, held at Crewkerne, Langport, and Wincanton.	The County Court of Somersetshire, held at Yeovil, in Circuit 55.
The County Court of Somersetshire, held at Weston-super-Mare.	The County Court of Somersetshire, held at Bridgewater, in Circuit 57.
The County Court of Somersetshire, held at Chard, Wellington, and Williton.	The County Court of Somersetshire, held at Taunton, in Circuit 57.
The County Court of Devonshire, held at Bideford, Holsworthy, South-Molton, and Torrington.	The County Court of Devonshire, held at Barnstaple, in Circuit 57.
The County Court of Devonshire, held at Axminster, Crediton, Honiton, Tiverton, and Newton Abbot and Torquay.	The County Court of Devonshire, held at Exeter, in Circuit 58.

APPENDIX VII.

Schedule I.

SCHEDULE I.—*continued.*

Courts which are excluded from Bankruptcy Jurisdiction.	Courts to which the Districts of the excluded Courts are attached.
The County Court of Devonshire, held at Kingsbridge, Okehampton, Tavistock, and Totnes and Paignton; and the County Court of Cornwall, held at Launceston, and Liskeard.	The County Court of Devonshire, held at Plymouth and East Stonehouse, in Circuit 58.
The County Court of Cornwall, held at Bodmin, Camelford, Falmouth, Helston, Penzance, Redruth, St.-Austell, and St.-Columb-Major.	The County Court of Cornwall, held at Truro, in Circuit 59.

Note.

The following County Courts, not having had attached to them the district of any County Court excluded from Jurisdiction in Bankruptcy or under the Companies (Winding-up) Act, 1890, and not being themselves excluded from such Jurisdictions, are not mentioned in the foregoing Order; but as they have Jurisdiction in Bankruptcy, and under the Companies (Winding-up) Act, 1890, their names are here given for the information of the public.

The County Court of Lancashire, held at Barrow-in-Furness and Ulverston, in Circuit 3.

The County Court of Lancashire, held at Wigan, in Circuit 5.

The County Court of Cheshire, held at Birkenhead, in Circuit 7.

The County Court of Lancashire, held at Salford, in Circuit 8.

The County Court of Yorkshire, held at Dewsbury, in Circuit 12.

The County Court of Yorkshire, held at Halifax, in Circuit 12.

The County Court of Yorkshire, held at Barnsley, in Circuit 16.

The County Court of Derbyshire, held at Chesterfield, in Circuit 19.

The County Court of Worcestershire, held at Stourbridge, in Circuit 23.

The County Court of Worcestershire, held at Dudley, in Circuit 25.

The County Court of Staffordshire, held at West Bromwich, in Circuit 25.

The County Court of Staffordshire, held at Wolverhampton, in Circuit 25.

The County Court of Glamorganshire, held at Swansea, in Circuit 30.

The County Court of Glamorganshire, held at Aberdare and Mountain Ash, in Circuit 30.

The County Court of Glamorganshire, held at Pontypridd, Ystradyfodwg and Porth, in Circuit 30.

The County Court of Glamorganshire, held at Neath and Aberavon, in Circuit 31.

The County Court of Hertfordshire, held at Barnet, in Circuit 37.

The County Court of Middlesex, held at Brentford, in Circuit 43.

The County Court of Kent, held at Maidstone, in Circuit 48.

The County Court of Sussex, held at Lewes and Eastbourne, in Circuit 50.

The County Court of Hampshire, held at Newport and Ryde, in Circuit 51.

SCHEDULE II.

Orders repealed.

Date.	Nature of Order.
January 1st, 1870.	Exclusion of County Courts from Bankruptcy Jurisdiction.
March 19th, 1875	The like.
April 25th, 1878	The like (two orders).
January 2nd, 1888	The like.
November 29th, 1890	Jurisdiction of County Courts under the Companies (Winding-up) Act, 1890.
August 23rd, 1893	Jurisdiction of County Courts in Bankruptcy.
October 6th, 1893.	Jurisdiction of County Courts under the Companies (Winding-up) Act, 1890.
May 28th, 1898	Bankruptcy and Companies' Jurisdiction of County Courts.

Dated May 19th, 1899.

HALSBURY, C.

APPENDIX VII.

Order, Dec., 1891.

ORDERS AS TO FEES.

COMPANIES (WINDING-UP) ACT, 1890.

ORDER AS TO FEES.

I, the Right Honourable Hardinge Stanley Baron Halsbury, Lord High Chancellor of Great Britain, Do, by virtue of the powers vested in me by the Companies (Winding-up) Act, 1890, direct that the fees in the scale hereto annexed shall, from and after the date of this Order, be the fees to be paid in respect of proceedings under the said Act, in lieu of the fees in the scale annexed to the Order of December 18th, 1890 (*a*).

(Signed) HALSBURY, C.

Dated the 17th day of December, 1891.

SCALE OF FEES.

TABLE A.

	£	s.	d.
Every petition	2	0	0
Every bond with sureties	0	10	0
Every subpœna or summons	0	3	0
Every order made in Court (except a winding-up order)	1	0	0
Every order made in chambers	0	5	0
Every affidavit filed other than proof of debts	0	2	0
For taking an affidavit or an affirmation, or attestation, upon honour in lieu of an affidavit or a declaration, except for proof of debts, and except declaration by a shorthand writer under Rule 16 (Form 6) for each person making the same	0	1	6
And in addition thereto for each exhibit referred to therein and required to be marked	0	1	0
On every proof of debt above 2*l*. (other than proof for workmen's wages under Rule 106)	0	1	0
Every application for search other than by petitioner, liquidator, or officer of the company	0	1	0
Every office copy, each folio of 72 words	0	0	4
Every application to inspect liquidator's statement lodged with registrar of Joint Stock Companies under section 15 of the Act	0	2	6
Every copy of or extract from such statement, each folio of 72 words or figures	0	0	4

(*a*) See Revenue Act, 1889, § 31, and the Treasury regulation directing accordingly, dated 10th June, 1891. As to exemptions from stamp duty, see Finance Act, 1895, § 16, and Bankruptcy Act, 1883, § 144.

	£	s.	d.
Every application by a committee of inspection to the Board of Trade for a special bank account	1	0	0
Every order of the Board of Trade for a special bank account .	2	0	0
Every application by a liquidator to an Official Receiver acting as Committee of Inspection	0	10	0
Every application under section 15 of the Act to the Board of Trade for payment of money out of the Companies Liquidation Account; and every application for the re-issue of a lapsed cheque or money order in respect of moneys standing to the credit of the Companies Liquidation Account:—			
Where the amount applied for does not exceed 1*l.* . .	0	1	0
Where the amount applied for exceeds 1*l.*	0	2	6

On one copy of the cash book showing assets realised, forwarded by the Official Receiver or liquidator to the Board of Trade, a fee according to the following scale on the gross amount of the assets realised and brought to credit, viz.:

On the first 5,000*l.* or fraction thereof .	1	per cent.
On the next 95,000*l.* ,, ,, .	$\frac{1}{2}$	,,
On the next 400,000*l.* ,, ,, .	$\frac{1}{4}$	,,
On the next 500,000*l.* ,, ,, .	$\frac{1}{8}$	,,
Above 1,000,000*l.* ,, ,, .	$\frac{1}{16}$	,,

For taxation of costs.—The same fees as those directed to be paid and collected by the order for the time being as to Supreme Court fees.

TABLE B.

I.—*Where the Official Receiver acts as provisional liquidator only.*

(a.) If the petition is withdrawn or dismissed:—

Such amount as the Court may consider reasonable to be paid by the petitioner (in addition to the fee payable on the petition) in respect of the services of the Official Receiver as provisional liquidator.

(b.) Where a winding-up order is made but the Official Receiver is not continued as liquidator:—

(1.) In respect of every 10 members, creditors and debtors, and every fraction of 10 . . . . . 0 10 0

Provided that where the net assets of the company are estimated not to exceed 500*l.*, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and postages.)

(2.) On the value of the company's property as estimated in the statement of affairs:—

On the first 5,000*l.* or fraction thereof .	1	per cent.
On the next 20,000*l.* ,, .	$\frac{1}{2}$	,,
On the next 75,000*l.* ,, .	$\frac{1}{4}$	,,
Above 100,000*l.*	$\frac{1}{8}$	,,

APPENDIX VII.

Order Dec., 1891.

	£	s.	d.
II.—*Where the Official Receiver is continued as liquidator of the company (including his services as provisional liquidator).*			
(1.) In respect of every 10 members, creditors and debtors, and every fraction of 10	1	0	0

Provided that where the net assets of the company are estimated not to exceed 500*l.*, three-fifths of the above fee only shall be charged.

(This fee to include cost of official stationery, printing, books, forms, and postages.)

(2.) Upon the total assets, including produce of calls on contributories, realised or brought to credit, after deducting sums paid to secured creditors (other than debenture holders), and not being moneys received and spent in carrying on the business of the company:—

On the first 1,000*l.* or fraction thereof .	5 per cent.
On the next 1,500*l.* ,, ,, .	4 ,,
On the next 2,500*l.* ,, ,, .	3 ,,
On the next 5,000*l.* ,, ,, .	2 ,,
On the next 90,000*l.* ,, ,, .	1 ,,
On the next 400,000*l.* ,, ,, .	½ ,,
On the next 500,000*l.* ,, ,, .	¼ ,,
Above 1,000,000*l.*	⅛ ,,

(3.) On the amount distributed in dividend or paid to contributories, &c. . . Half the above per-centages.

III.—*Where the Official Receiver is continued as liquidator of the company for the purpose of carrying out a reconstruction or other scheme by which the affairs of the company are wound up otherwise than by the realisation and distribution of the assets* (*b*):—

(1.) For every ten members, creditors, and debtors, and on any assets realised or distributed, the same fees as are chargeable under No. II. of this table.

(2.) On the estimated value of the company's property (after deducting any amount realised), the same fees as are chargeable under No. I. of this table.

These fees to include the services of the Official Receiver as provisional liquidator.

IV.—Travelling, keeping possession, legal and other reasonable expenses of the Official Receiver, the amount disbursed.

V.—On every payment under section 15 of money out of the Companies Liquidation Account, threepence on each pound or fraction of a pound to be charged as follows:—

Where the money consists of unclaimed dividends, on each dividend paid out.

Where the money consists of undistributed funds or balances, on the amount paid out.

(*b*) See *infra*, Order 31 August, 1893, p. 1589.

TABLE C.

	£	s.	d.
High bailiff for attending sittings of the Court, under each winding-up order, per case	0	6	0
Serving every petition or subpœna or winding-up or other order (not serviceable by post) within two miles, including affidavit of service	0	3	6
If serviceable by post	0	1	0
Executing every warrant of seizure, or search warrant, or warrant of apprehension, or order of commitment within two miles of Court	0	10	0
Keeping possession under a warrant, for each day the man is actually in possession; including affidavit of possession being actually kept	0	4	6
(not less than 3*s.* 6*d.* of the above sum is to be paid to the man in possession, and his receipts produced.)			
High bailiff's or (in the London district) officer's man, travelling to place of possession, or to execute a warrant of or order of commitment, or to serve a summons or subpœna, or for any other purpose specially directed by the Court, per mile	0	0	5
His time, per day, where distance exceeds ten miles	0	4	6
His expenses, per day	0	4	6
If high bailiff of a county court or officer of Supreme Court directed by the Court personally to travel, per mile	0	0	7
His time, per day	0	10	0
His expenses, per day	0	10	0

We, the undersigned Lords Commissioners of Her Majesty's Treasury, do hereby sanction the foregoing scales of fees, and do direct that the fees mentioned in Table A. shall be taken in money, except when they are to be taken by an officer of the Supreme Court of Judicature, or an officer of the Board of Trade, or an officer in the Companies Registration Office, and that the fees mentioned in Tables B. and C. shall be taken in money.

The documents to be stamped and the description of stamps to be used shall be as provided in the schedule annexed hereto.

The adhesive stamps shall be Judicature fee stamps, when the fee is to be taken by any officer of the Supreme Court of Judicature; they shall be stamps over-printed with the words "Companies Winding-up," when the fee is to be taken by the Official Receiver or any other officer of the Board of Trade; and they shall be the stamps used for the purposes of the "Companies Act" when taken by any officer in the Companies Registration Office.

They shall be cancelled by the various court or other officials by perforation, or in such other manner as the Commissioners of Inland Revenue may from time to time direct.

The impressed stamp shall be of such character as the said commissioners may adopt for the purpose.

And we further direct that wherever practicable the stamp shall be affixed or the money paid in respect of every fee before the proceeding is

APPENDIX VII.

Orders Dec., 1891, June, 1892.

had in respect of which the fee is payable; and that the charge to be made by the London Gazette for the insertion of each notice authorised by the Act or Rules shall be five shillings.

(Signed) HERBERT EUSTACE MAXWELL,
SIDNEY HERBERT,
Two of the Lords Commissioners of Her Majesty's Treasury.

Dated the 17th day of December, 1891.

THE SCHEDULE ABOVE REFERRED TO.

Proceeding.	Document to be stamped.	Character of Stamp to be used.
Every petitition	Petition .	Impressed.
Every bond with sureties	Bond . .	Impressed.
Every affidavit filed	Affidavit .	Impressed or adhesive.
Every subpœna or summons . . .	Subpœna or summons.	Impressed.
Every order made in Court or Chambers .	Order . .	Impressed.
For taking an affidavit or an affirmation, or attestation upon honour in lieu of an affidavit or a declaration.	Affidavit .	Impressed or adhesive.
Every proof of debt above 2*l*.	Proof . .	Impressed or adhesive.
Every application for search	Application .	Impressed.
Every application to inspect liquidator's statement.	Application .	Impressed.
Every copy or office copy	Office copy .	Impressed or adhesive.
Every certificate of taxation by any officer of the Court for any costs, charges, or disbursements.	Certificate .	Impressed or adhesive.

COMPANIES (WINDING-UP) ACT, 1890.

ORDER AS TO FEES.

I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, do, by virtue of the powers vested in me by the Companies (Winding-up) Act, 1890, direct that in cases where the head office of the company being wound up is situated out of England, and the liquidation takes place partly in England and partly elsewhere, such reduction may be made in the fees prescribed in the scale of fees annexed

to the order of 17th December, 1891, as may, on the application of the Official Receiver, be sanctioned by the Court.

Dated the 24th day of June, 1892.

(Signed) HALSBURY, C.

We, the undersigned Lords Commissioners of Her Majesty's Treasury, do hereby concur in the foregoing Order.

(Signed) HERBERT EUSTACE MAXWELL,
W. H. WALROND,
Two of the Lords Commissioners of Her Majesty's Treasury.

Dated the 25th day of June, 1892.

COMPANIES (WINDING-UP) ACT, 1890.

ORDER AS TO FEES.

I, the Right Honourable Farrer, Baron Herschell, Lord High Chancellor of Great Britain, do, by virtue of the powers vested in me by the Companies (Winding-up) Act, 1890, direct that, notwithstanding anything in the Order as to Fees of the 17th December, 1891, in cases where the Official Receiver is continued as liquidator of a Company for the purpose of carrying out a reconstruction or other scheme, by which the affairs of the Company are wound up otherwise than by the realisation and distribution of the assets, or where, during the period that the Official Receiver is acting as Provisional Liquidator, the proceedings under the Winding-up Order are stayed on the ground that a reconstruction or scheme of arrangement has been sanctioned by the Court, such reduction may be made in the fees prescribed in the Scale of Fees annexed to the Order of 17th December, 1891, as may, on the application of the Official Receiver, and with the concurrence of the Board of Trade, be sanctioned by the Court.

Dated the 24th day of August, 1893.

(Signed) HERSCHELL, C.

We, the undersigned Lords Commissioners of Her Majesty's Treasury, do hereby concur in the foregoing Order.

(Signed) THOMAS E. ELLIS,
W. A. MCARTHUR,
Two of the Lords Commissioners of Her Majesty's Treasury.

Dated the 31st day of August, 1893.

APPENDIX VII.

Order Dec., 1900.

ORDER OF THE BOARD OF TRADE, DATED DECEMBER 28, 1900, PRESCRIBING FEES ON REGISTRATION OF CERTAIN DOCUMENTS, &c., UNDER THE COMPANIES ACTS, 1862 AND 1900.

Whereas by section 14 of the Companies Act, 1900, it is provided that the Registrar of Joint Stock Companies shall, on payment of the prescribed fee, enter in the register certain particulars with respect to every mortgage or charge created by any company after the commencement of the said Act and requiring registration under the said section, and that the register shall be open to inspection by any person on payment of the prescribed fee not exceeding 1*s*. for each inspection:

And whereas by section 30 of the said Act the expression "prescribed" means prescribed by the Board of Trade:

Now therefore the Board of Trade do hereby order that the fees payable on the registration of mortgages and charges created by any company on and after the 1st January, 1901, and requiring registration under section 14 of the Companies Act, 1900, and on the inspection of the register of such mortgages and charges, shall be as follows:—

For registering any mortgage or charge created by a company—

Where the amount of the mortgage or charge does not exceed 200*l*., 10*s*.

Where it does exceed 200*l*., 1*l*.

Provided that, in the case of a series of debentures, registered in accordance with sub-sections 4 and 5 of section 14 of the said Act, the above fees shall be charged on the first debenture of such series and a further fee of 6*d*. on each subsequent debenture of the series.

For inspecting the register of mortgages and charges—

For each inspection, 1*s*.

The Board of Trade further direct, in pursuance of section 71 of the Companies Act, 1862, and Table B. of Schedule 1 of the said Act, that a fee of 5*s*. shall be payable on each of the following documents presented for registration to or given out by the registrar in pursuance of the Companies Act, 1900:—

Declaration of compliance with the requisitions of the Companies Acts.

Consent to act as director of a company.

List of persons who have consented to be directors of a company.

Declaration made on behalf of a company that the conditions of section 6 (1) of the Companies Act, 1900, have been complied with.

Return of allotments made by a company.

Report pursuant to section 12 of the Companies Act, 1900.

Memorandum of satisfaction of mortgage or charge.

Application for certificate of incorporation when no prospectus is issued.

Any contract filed with the registrar pursuant to section 2 (1) (ii) or section 7 (1) (b) of the Companies Act, 1900.

Copy of prospectus filed with the registrar pursuant to section 9 (2) of the Companies Act, 1900.

Certificate of registration of any mortgage or charge after the first certificate.

Orders Aug., 1901. Jan., 1901.

Copy of any memorandum of satisfaction given pursuant to section 16 of the Companies Act, 1900.

COURTENAY BOYLE.

Board of Trade,
28th December, 1900.

ORDER OF THE BOARD OF TRADE DATED AUGUST 15, 1901, PRESCRIBING FEES ON REGISTRATION OF CERTAIN DOCUMENTS UNDER COMPANIES ACT, 1900.

THE COMPANIES ACTS, 1862 TO 1900.

Whereas the Board of Trade by an Order dated the 28th December, 1900, a copy of which appeared in the London Gazette of the 1st January, 1901, directed, in pursuance of section 71 of the Companies Act, 1862, and Table B of schedule 1 of the said Act, that a fee of 5*s*. should be payable on each of certain documents presented for registration to, or given out by, the registrar in pursuance of the Companies Act, 1900:

Now therefore the Board of Trade further direct, in pursuance of section 71 of the Companies Act, 1862, and Table B of schedule 1 of the said Act, that a fee of 5*s*. shall also be payable on the following document presented for registration to the registrar in pursuance of the Companies Act, 1900.

Application for a certificate of incorporation when no directors have been appointed.

FRANCIS J. S. HOPWOOD.

Board of Trade,
15th August, 1901.

TREASURY ORDER, DATED JANUARY 31, 1901, AS TO THE COLLECTION BY STAMPS OF FEES PAYABLE TO THE REGISTRAR UNDER THE COMPANIES ACTS, 1862-1900.

Whereas by Treasury orders, dated respectively the 1st December, 1866, and 28th March, 1878, certain regulations were made for the collection of fees payable to the Companies Registration Office:

And whereas it is expedient to amend such regulations:

Now we, being two of the Lords Commissioners of His Majesty's Treasury, in pursuance of the powers vested in us by the Public Offices Fees Act, 1879, do hereby revoke the above-named regulations, and we do hereby direct that all the fees payable to the registrar of joint stock companies shall be collected by means of stamps. 42 & 43 Vict. c. 58.

Impressed stamps, of such design and character, as may from time to time be adopted by the Commissioners of Inland Revenue, shall be used in all cases except those stated below.

Adhesive stamps, of the description heretofore in use, bearing the imprint of the words "Companies Registration," shall be affixed to copies of registered documents supplied to the public.

The adhesive stamps shall be cancelled by an overprint, with a hand

APPENDIX VII.

stamp, bearing the word "cancelled," together with the date of such cancelling; or in such manner as the Commissioners of Inland Revenue may from time to time direct.

Given under our hands this 31st day of January, 1901.

W. H. FISHER.
H. T. ANSTRUTHER.

Treasury Chambers,
Whitehall.

THE COMPANIES ACTS, 1862-1890.

REGULATIONS ISSUED BY THE BOARD OF TRADE UNDER THE PROVISIONS OF RULE 175 OF THE GENERAL RULES OF THE 29TH NOVEMBER, 1890.

Remittances to Companies Liquidation Account.

1. All moneys received by a liquidator of a company which is being wound up by order of the Court are required to be paid, without deduction, to the Companies Liquidation Account (unless an account with any other bank has been authorised by the Board of Trade under section 11 of the Companies (Winding-up) Act, 1890), and remittances are to be made once a week, or forthwith, if a sum of 200*l.* has been received. Remittances may be made direct to the Bank of England, Law Courts Branch, London, by cheque crossed "Bank of England, credit of Companies Liquidation Account."

2. The remittances to the Bank of England should be accompanied by a Receivable Order (Form C. No. 7), and the counterpart or advice letter should be transmitted by the same post to the Assistant Secretary, Finance Department, Board of Trade. Halfpence should not be included in remittances. Forms of Receivable Order will be supplied on application to the Inspector General in Companies Liquidation (*b*).

3. By sub-section 6 of section 11 of the Companies (Winding-up) Act, 1890, a liquidator is absolutely prohibited from paying any sums received by him as liquidator into his private banking account, and by sub-section 4 it is enacted that if a liquidator at any time retains for more than ten days a sum exceeding 50*l.*, or such other amount as the Board of Trade in any particular case authorise him to retain, then, unless he explains the retention to the satisfaction of the Board of Trade, he shall pay interest on the amount so retained in excess at the rate of 20*l.* per centum per annum and shall be liable to disallowance of all or such part of his remuneration as to the board shall seem just, and to be removed from his office by the board, and shall be liable to pay any expenses occasioned by reason of his default.

All current bills of exchange should be remitted to the Companies Liquidation Account.

Special bank account.

4. Where a special bank account is sanctioned by the Board of Trade under the provisions of section 11 (3) of the Companies (Winding-up) Act, 1890, *all* moneys received must be paid into the appointed bank. The pass-book with the special bank should be forwarded at each audit.

Payments made to a liquidator out of Companies Liquidation Account.

5. All necessary disbursements made by a liquidator on account of a company to the date of his application for release will be repaid to him

(*b*) See *ante*, p. 1386, note (*d*).

out of any moneys standing to the credit of the company in the Companies Liquidation Account on application to the Inspector-General (Form C. No. 5).

Any expenses properly incurred by the liquidator after applying for, but before obtaining his release, will be repaid to him by the Official Receiver out of any funds available for the purpose.

6. Cheques to the order of the payee for sums which become payable on account of the company may be obtained by the liquidator on application by him on Form C. No. 6, for delivery by him to the parties entitled.

7. Under no circumstances will the Board of Trade hold themselves responsible for payments made on the requisition of the liquidator.

8. The Inspector-General will be prepared to certify the balance standing to the credit of a company in the Companies Liquidation Account, on receiving from the liquidator a statement of the balance shown by the bank columns of the cash-book.

9. Moneys withdrawn from the bank should not be treated as receipts from realisations, but should appear only in the "drawn from bank" column of the cash-book, the application of the money being entered in the "payments" column. The payments into the bank should appear only in the "paid into bank" column in the cash-book.

Cancellation of cheques and money orders.

10. All applications for the cancellation of cheques and money orders should be addressed to the Inspector-General and should state the grounds upon which the cancellation is required.

Payment of dividends.

11. The payment of dividends will in every instance, *except where a special bank account has been authorised*, be made by cheques on the Bank of England, or money orders, which will be prepared by the Board of Trade on the application of the liquidator (Form C. No. 40), and will be transmitted to him for distribution amongst the creditors. The Board of Trade will require *ten* days' notice to enable them to prepare the cheques or money orders for dividends. As imperfect or inaccurate lists would cause considerable inconvenience and increased labour, great care should be exercised in the preparation of them, and in all cases of payment to executors, trustees, representative officials, &c., the name or names should be inserted in the list.

The several payees in the lists should be numbered consecutively, so tha .or the purpose of identification corresponding numbers may be affixed to the cheques and money orders.

The total amount of the dividend payable should be charged in the cash-book in one sum. If the dividend has been paid by cheques on the Companies Liquidation Account, the liquidator on the expiration of six months from the date of issue, or on application for his release, if that event occurs earlier, should return any cheques or postal orders remaining in hand to the Assistant Secretary, Finance Department, Board of Trade.

If the dividend has been paid through a special bank, the liquidator will be required, at the expiry of six months from the date of the declaration of a dividend, to forward to the Inspector-General, for audit, vouchers for the dividends paid and a list of those remaining unclaimed. The liquidator will then be furnished with a receivable order for payment into the Bank of England of the amount of the dividends unclaimed.

Under no circumstances should unclaimed dividends be credited to the estate without the previous sanction of the Inspector-General.

APPENDIX VII.

THE PREFERENTIAL PAYMENTS IN BANKRUPTCY ACT, 1888, AND THE COMPANIES ACTS, 1862 TO 1890.

REGULATIONS APPROVED BY THE BOARD OF TRADE AND THE COMMISSIONERS OF INLAND REVENUE AS TO QUEEN'S TAXES ASSESSED ON COMPANIES WOUND UP BY THE COURT.

1. Where a winding-up order is made on or after the 1st December in the year of assessment, or the Official Receiver or liquidator remains in possession of the premises in respect of which Queen's taxes are assessed under a winding-up order made prior to the 1st December, until the 1st January next following, the collector shall be entitled to prove for the said taxes, viz.:—the Income Tax (Schedule A), Inhabited House Duty and Land Tax, assessed on the company up to the 5th April next following the date of the winding-up order, in the same manner as if such taxes had become due and payable at the date of the winding-up order, and such proof shall rank for dividend.

2. Where a winding-up order is made prior to the 1st December in the year of assessment, the inland revenue authorities will make no claim on the Official Receiver or liquidator for Income Tax (Schedule A) Inhabited House Duty and Land Tax for the year ending 5th April next following the date of the winding-up order, unless the Official Receiver or liquidator remains in possession of the premises in respect of which the taxes are assessed until the following 1st January.

3. Where the Official Receiver or liquidator disposes of a business as a going concern, he will allow to the purchaser the proportion of the Income Tax (Schedule A) and Land Tax for the current year to the date of the completion of the purchase, and the purchaser will become liable to the inland revenue authorities for the taxes in question for the whole year.

4. Provided always that nothing in these regulations shall be deemed to interfere with the right of the Crown to enforce payment of Income Tax (Schedule A) and Land Tax *actually due and payable*, by distress levied on the property of the company. These taxes for the year ending 5th April next following the date of the winding-up order should, therefore, be dealt with on the footing of "secured" debts, and be paid by the Official Receiver or liquidator on demand without any proof on the part of the collector, if on or after the 1st January in the year of assessment there are on the premises sufficient goods belonging to the company on which the collector might levy, and notice of any such claim should be given to the Official Receiver or liquidator by the collector forthwith upon the making of the winding-up order. If at such time there are no goods upon which distress can be levied, proof of the debt may be made by the collector as directed in paragraph 1, and such proof shall, if found correct, be admitted to rank for dividend.

In like manner any Income Tax (Schedule A) and Land Tax assessed on the company up to the 5th April next before the date of the winding-up order should be dealt with as secured debts if there are at the time of the collector's demand sufficient goods on the premises on which he might levy. If there are no such goods proof of the debt may be made by

the collector, and such proof shall, if found correct, be admitted as a preferential claim in so far as it relates to taxes payable in full under section 1 (1a) of the Preferential Payments in Bankruptcy Act, 1888, and as ranking for dividend for any part thereof not so payable in full.

5. Where Income Tax is outstanding under Schedules B, D, or E, the inland revenue authorities will, on receipt of an affidavit by the secretary or other officer of the company, with a certificate by the Official Receiver or liquidator, setting out that no income taxable under such Schedule has been made, forego all claim to payment of the tax, whether the same is payable in full under section 1 (1a) of the Preferential Payments in Bankruptcy Act, 1888, or otherwise, but the waiver of claim under this Regulation shall not embrace rents, royalties, interest of money, or annuities, or fees, or salaries, from which deductions have been made on account of Income Tax.

6. In cases where an affidavit by the secretary or other officer of the company cannot be obtained, the certificate of the Official Receiver or liquidator may be accepted as sufficient evidence.

Board of Trade,
Bankruptcy Department,
1, Horse Guards Avenue,
Whitehall, London, S.W.

MODEL FORM OF CLAIM FOR RELIEF FROM PAYMENT OF INCOME TAX, SCHEDULES B, D, OR E.

THE PREFERENTIAL PAYMENTS IN BANKRUPTCY ACT, 1888, AND THE COMPANIES ACTS, 1862 TO 1890.

In the matter of Limited.

the of the above-named company, do hereby make oath and say as follows:—

1. That *[by virtue of an Act of Parliament, 5 & 6 Vict. c. 35, § 134]* the said company is justly and truly entitled to be relieved of the payment of the sum of £ , being the amount of Income Tax charged to the said company under Schedule from the 6th April, 1 , to the 5th April, 1 , the ground for exemption being that no income taxable under the said schedule has been made †*by the said company*† during the aforesaid period.

Sworn at
in the county of
this day of
190 .
Before me,

I hereby certify that from an examination of the (*a*) of the above-named company (which company is now being wound up under an order made on the day of 190) and of such of the books and accounts produced to me as show the (*b*) of the said

* The words in brackets to be left out in claims under Schedule B or E.

† The words "by the said company" to be left out in cases of Schedule E, assessment on fees, salaries, &c., paid to directors, &c.

(*a*) "Secretary" or other officer.

(*b*) Trading or farming operations, or income from other sources.

APPENDIX VII.

company during the period referred to in the above affidavit, it does not appear that (c) was made †*by the said company*† during such period, and therefore the assets of the said company should be relieved from the payment of £ , being the amount of Income Vax claimed under Schedule .

Dated this day of 190 .

Official Receiver or liquidator.

Address

(c) "Any income" *or* "any income liable to taxation under Schedules B, D, or E."

† See above.

No. VIII.

THE LIFE ASSURANCE COMPANIES ACTS.

THE LIFE ASSURANCE COMPANIES ACT, 1870.

33 & 34 VICT. c. 61.

An Act to amend the law relating to Life Assurance Companies.

[9th August, 1870.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as "The Life Assurance Companies Act, 1870." Short title.

2. In this Act— Interpretation of terms.

The term "company" means any person or persons, corporate or unincorporate, not being registered under the Acts relating to friendly societies, who issue or are liable under policies of assurance upon human life within the United Kingdom, or who grant annuities upon human life within the United Kingdom (*a*):

The term "chairman" means the person for the time being presiding over the court or board of directors of the company:

The term "policy holder" means the person who for the time being is the legal holder of the policy for securing the life assurance endowment, annuity, or other contract with the company (*b*):

The term "financial year" means each period of twelve months at the end of which the balance of the accounts of the company is struck, or if no such balance is struck, then each period of twelve months ending with the thirty-first day of December:

The term "Court" means, in the case of a company registered or having its head office in England, the High Court of Chancery; in the case of a company registered or having its head office in Ireland, the Court of Chancery in Ireland; in all cases of companies registered or having its head office in Scotland, the Court of Session, in either division thereof:

The term "registrar" means the registrar of joint stock companies in England and Scotland, and the assistant-registrar of joint stock companies in Ireland.

3. Every company established after the passing of this Act within the United Kingdom, and every company established or to be established out Deposit.

(*a*) See the Friendly Societies Act, 1896 (59 & 60 Vict. c. 25); and the Collecting Societies and Industrial Assurance Companies Act, 1896 (59 & 60 Vict. c. 26); and *Newbold Friendly Society* v. *Barlow* [1893], 2 Q. B. 128.

(*b*) See *Sovereign Life Assurance Co.*, 42 Ch. D. 540.

APPENDIX VIII.

of the United Kingdom which shall after the passing of this Act commence to carry on the business of life assurance within the United Kingdom, shall be required to deposit the sum of twenty thousand pounds with the Accountant General of the Court of Chancery (c), to be invested by him in one of the securities usually accepted by the Court for the investment of funds placed from time to time under its administration, the company electing the particular security and receiving the income therefrom, and the registrar shall not issue a certificate of incorporation unless such deposit shall have been made, and the Accountant General shall return such deposit to the company so soon as its life assurance fund accumulated out of the premiums shall have amounted to forty thousand pounds (d).

Life funds separate.

4. In the case of a company established after the passing of this Act transacting other business besides that of life assurance, a separate account shall be kept of all receipts in respect of the life assurance and annuity contracts of the company, and the said receipts shall be carried to and form a separate fund to be called the life assurance fund of the company, and such fund shall be as absolutely the security of the life policy and annuity holders as though it belonged to a company carrying on no other business than that of life assurance, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of life assurance; and in respect to all existing companies, the exemption of the life assurance fund from liability for other obligations than to its life policy-holders shall have reference only to the contracts entered into after the passing of this Act, unless by the constitution of the company such exemption already exists: Provided always, that this section shall not apply to any contracts made by any existing company by the terms of whose deed of settlement the whole of the profits of all the business are paid exclusively to the life policy-holders, and on the face of which contracts the liability of the assured distinctly appears (e).

Statements to be made by companies.

5. From and after the passing of this Act every company shall, at the expiration of each financial year of such company, prepare a statement of its revenue account for such year, and of its balance-sheet at the close of such year, in the forms respectively contained in the first and second schedules to this Act.

Statements by company doing other than life business.

6. Every company which, concurrently with the granting of policies of assurance or annuities on human life, transacts any other kind of assurance or other business shall, at the expiration of each such financial year as aforesaid, prepare statements of its revenue account for such year, and of its balance sheet at the close of such year, in the forms respectively contained in the third and fourth schedules of this Act.

Actuarial report and abstract.

7. Every company shall, once in every five years if established after the passing of this Act, and once every ten years if established before the

(c) By 34 & 35 Vict. c. 58, § 1, this money was to be paid into the Court of Chancery and to be dealt with in the same way as other monies paid into that Court were dealt with; but that section was repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 39). It will now be paid into the Chancery Division of the High Court of Justice: see Dan. Ch. Practice, 7th ed., pp. 1927 *et seq.*

(d) See, also, Life Ass. Comp. Act, 1872, § 1, *infra*, and *Scottish Economic Life Ass. Soc.*, 45 Ch. D. 220.

(e) See, also, Life Ass. Comp. Act, 1872, § 2, *infra*.

passing of this Act, or at such shorter intervals as may be prescribed by the instrument constituting the company, or by its regulations or bye-laws, cause an investigation to be made into its financial condition by an actuary, and shall cause an abstract of the report of such actuary to be made in the form prescribed in the fifth schedule to this Act.

Statement of life and annuity business.

8. Every company shall *on or before the thirty-first day of December one thousand eight hundred and seventy-two, and thereafter* within nine months after the date of each such investigation as aforesaid into its financial condition, prepare a statement of its life assurance and annuity business in the form contained in the sixth schedule to this Act, each of such statements to be made up as at the date of the last investigation, *whether such investigation be made previously or subsequently to the passing of this Act:* Provided as follows:

(1.) *If the next financial investigation after the passing of this Act of any company fall during the year one thousand eight hundred and seventy-three, the said statement of such company shall be prepared within nine months after the date of such investigation, instead of on or before the thirty-first day of December one thousand eight hundred and seventy-two* (*f*):

(2.) If such investigation be made annually by any company, such company may prepare such statement at any time, so that it be made at least once in every three years.

The expression date of each such investigation in this section shall mean the date to which the accounts of each company are made up for the purposes of each such investigation.

Forms may be altered.

9. The Board of Trade, upon the application of or with the consent of a company, may alter the forms contained in the schedules to this Act, for the purpose of adapting them to the circumstances of such company, or of better carrying into effect the objects of this Act.

Statements, &c. to be signed and printed and deposited with Board of Trade.

10. Every statement or abstract hereinbefore required to be made shall be signed by the chairman and two directors of the company and by the principal officer managing the life assurance business, and, if the company has a managing director, by such managing director, and shall be printed; and the original, so signed as aforesaid, together with three printed copies thereof, shall be deposited at the Board of Trade within nine months of the dates respectively hereinbefore prescribed as the dates at which the same are to be prepared. And every annual statement so deposited after the next investigation (*g*) shall be accompanied by a printed copy of the abstract required to be made by section seven.

Copies of statements to be given to shareholders, &c.

11. A printed copy of the last deposited statement, abstract, or other document by this Act required to be printed shall be forwarded by the company, by post or otherwise, on application, to every shareholder and policy-holder of the company.

List of shareholders.

12. Every company which is not registered under "the Companies Act, 1862," and which has not incorporated in its deed of settlement section ten of "the Companies Clauses Consolidation Act, 1845," shall keep a "Shareholders' address-book," in accordance with the provisions of that

(*f*) The words in italics were repealed by the Statute Law Revision Act, 1883, 46 & 47 Vict. c. 39.

(*g*) "Next investigation" means the first investigation after the passing of the Act of 1872, see § 3 of that Act, *infra*.

section, and shall furnish, on application, to every shareholder and policy-holder of the company a copy of such book, on payment of a sum not exceeding sixpence for every hundred words required to be copied for such purpose.

Deed of settlement to be printed.

13. Every company which is not registered under "The Companies Act, 1862," shall cause a sufficient number of copies of its deed of settlement to be printed, and shall furnish, on application, to every shareholder and policy-holder of the company a copy of such deed of settlement on payment of a sum not exceeding two shillings and sixpence.

Amalgamation or transfer.

14. Where it is intended to amalgamate two or more companies, or to transfer the life assurance business of one company to another, the directors of any one or more of such companies may apply to the Court, by petition, to sanction the proposed arrangement, notice of such application being published in the Gazette, and the Court, after hearing the directors and other persons whom it considers entitled to be heard upon the petition, may confirm the same if it is satisfied that no sufficient objection to the arrangement has been established.

Before any such application is made to the Court, a statement of the nature of the amalgamation or transfer, as the case may be, together with an abstract containing the material facts embodied in the agreement or deed under which such amalgamation or transfer is proposed to be effected, and copies of the actuarial or other reports upon which such agreement or deed is founded, shall be forwarded to each policy holder of both companies in case of amalgamation, or to each policy holder of the transferred company in case of transfer by the same being transmitted in manner provided by section one hundred and thirty-six of the Companies Clauses Consolidation Act, 1845, for the transmission to shareholders of notices not requiring to be served personally; and the agreement or deed under which such amalgamation or transfer is effected shall be open for the inspection of the policy holders and shareholders at the office or offices of the company or companies for a period of fifteen days after the issuing of the abstract herein provided.

The Court shall not sanction any amalgamation or transfer in any case in which it appears to the Court that policy holders representing one-tenth or more of the total amount assured in any company which it is proposed to amalgamate, or in any company the business of which it is proposed to transfer, dissent from such amalgamation or transfer.

No company shall amalgamate with another, or transfer its business to another, unless such amalgamation or transfer is confirmed by the Court in accordance with this section.

Provided always, that this section shall not apply in any case in which the business of any company which is sought to be amalgamated or transferred does not comprise the business of life assurance (*h*).

Statements in case of amalgamation or transfer.

15. When an amalgamation takes place between any companies, or when the business of one company is transferred to another company, the combined company or the purchasing company, as the case may be, shall, within ten days from the date of the completion of the amalgamation or transfer, deposit with the Board of Trade certified copies of statements of the assets and liabilities of the companies concerned in such amalgamation or transfer, together with a statement of the nature and terms of the

(*h*) See *ante*, pp. 1209, 1210.

amalgamation or transfer and a certified copy of the agreement or deed under which such amalgamation or transfer is effected, and certified copies of the actuarial or other reports upon which such agreement or deed is founded; and the statement and agreement or deed of amalgamation or transfer shall be accompanied by a declaration under the hand of the chairman of each company and the principal managing officer of each company, that to the best of their belief every payment made or to be made to any person whatsoever on account of the said amalgamation or transfer is therein fully set forth, and that no other payments beyond those set forth have been made or are to be made either in money, policies, bonds, valuable securities, or other property by or with the knowledge of any parties to the said amalgamation or transfer (*i*).

Documents may be transferred from Board of Trade to registry of joint stock companies.

16. The Board of Trade may direct any printed or other documents required by this Act, or certified copies thereof, to be kept by the registrar of joint stock companies or other officer of the Board of Trade; and any person may, on payment of such fees as the Board of Trade may direct, inspect the same at his office, and procure copies thereof.

Documents to be received in evidence.

17. Every statement, abstract, or other document deposited with the Board of Trade or with the registrar of joint stock companies under this Act shall be receivable in evidence; and every document purporting to be certified by one of the secretaries or assistant secretaries of the Board of Trade, or by the said registrar, to be such deposited document, and every document purporting to be similarly certified to be a copy of such deposited document, shall, if produced out of the custody of the Board of Trade or of the said registrar, be deemed to be such deposited document as aforesaid, or a copy thereof, and shall be received in evidence as if it were the original document, unless some variation between it and the original document shall be proved.

Penalty for non-compliance with Act.

18. Every company which makes default in complying with the requirements of this Act shall be liable to a penalty not exceeding fifty pounds for every day during which the default continues; and if default continue for a period of three months after notice of default by the Board of Trade, which notice shall be published in one or more newspapers as the Board of Trade may direct, and after such publication the Court may order the winding up of the company, in accordance with the Companies Act, 1862, upon the application of one or more policy-holders or shareholders.

Penalty for falsifying statements, &c.

19. If any statement, abstract, or other document required by this Act is false in any particular to the knowledge of any person who signs the same, such person shall be liable on conviction thereof on indictment to fine and imprisonment, or on summary conviction thereof to a penalty not exceeding fifty pounds.

Penalties, how to be recovered and applied.

20. Every penalty imposed by this Act shall be recovered and applied in the same manner as penalties imposed by the Companies Act, 1862, are recoverable and applicable (*j*).

Other circumstances under which company may be wound up by the Court of Chancery.

21. The Court may order the winding up of any company, in accordance with the Companies Act, 1862, on the application of one or more policy-holders or shareholders, upon its being proved to the satisfaction of the Court that the company is insolvent, and in determining whether or not the company is insolvent, the Court shall take into account its contingent

(*i*) See *ante*, pp. 1209, 1210. (*j*) See §§ 65 and 66 of that Act, pp. 1276, 1277.

or prospective liability under policies and annuity and other existing contracts; but the Court shall not give a hearing to the petition until security for costs for such amount as the judge shall think reasonable shall be given, and until a *primâ facie* case shall also be established to the satisfaction of the judge; and in case of a proprietary company having an uncalled capital of an amount sufficient, with the future premiums receivable by the company, to make up the actual invested assets equal to the amount of the estimated liabilities, the Court shall suspend further proceedings on the petition for a reasonable time (in the discretion of the Court), to enable the uncalled capital, or a sufficient part thereof, to be called up; and if, at the end of the original or any extended time for which the proceedings shall have been suspended, such an amount shall not have been realised by means of calls as, with the already invested assets, to be equal to the liabilities, an order shall be made on the petition as if the company had been proved insolvent.

Power of Court to reduce contracts.

22. The Court, in the case of a company which has been proved to be insolvent, may, if it thinks fit, reduce the amount of the contracts of the company upon such terms and subject to such conditions as the Court thinks just, in place of making a winding-up order (*k*).

Notices under this Act to policy-holders.

23. Any notice which is by this Act required to be sent to any policy-holder may be addressed and sent to the person to whom notices respecting such policy are usually sent, and any notice so addressed and sent shall be deemed and taken to be notice to the holder of such policy.

Statements, &c., to be laid before Parliament.

24. The Board of Trade shall lay annually before Parliament the statements and abstracts of reports deposited with them under this Act during the preceding year.

Exceptions.

25. This Act shall not affect the Commissioners for the Reduction of the National Debt, nor the postmaster-general, acting under the authorities vested in them respectively by the Acts tenth George the Fourth, chapter twenty-four,* third and fourth William the Fourth, chapter fourteen, sixteenth and seventeenth Victoria, chapter forty-five, and twenty-seventh and twenty-eighth Victoria, chapter forty-three.

* [*Altered from* forty-one, *pursuant to* 34 & 35 *Vict. c.* 58.]

(*k*) See as to the contracts to be included in a reduction, *Great Britain Mutual Life Ass. Soc.*, 19 Ch. D. 39, affirmed 20 Ch. D. 351, and *ante*, pp. 856, 857.

FIRST SCHEDULE.

Revenue Account of the _____ for the year ending _____.

18 . (Date.)		£ s. d.	18 . (Date.)		£ s. d.
	Amount of funds at the beginning of the year			Claims under policies (after deduction of sums re-assured)	
	Premiums			Surrenders	
	Consideration for annuities granted . .			Annuities	
	Interest and dividends			Commission	
	Other receipts (accounts to be specified) .			Expenses of management	
				Dividends and bonuses to shareholders (if any)	
				Other payments (accounts to be specified) .	
				Amount of funds at the end of the year, as per Second Schedule	
	£			£	

Note 1.—Companies having separate accounts for annuities to return the particulars of their annuity business in a separate statement.
Note 2.—Items in this and in the accounts in the Third and Fifth Schedules should be the net amounts after deduction of the amounts paid and received in respect of re-assurances.

SECOND SCHEDULE.

Balance sheet of the on the , 18 .

LIABILITIES.	£ s. d.	ASSETS.	£ s. d.
Shareholders' capital paid up (if any) . . £		Mortgages on property within the United Kingdom .	
Assurance fund		Do. do. out of the United Kingdom .	
Annuity fund (if any)		Loans on the company's policies	
Other funds, if any, to be specified . .		Investments:	
Total funds as per First Schedule . . . £		In British Government securities . . .	
Claims admitted but not paid *		Indian and Colonial Government securities . .	
Other sums owing by the company * (accounts to be specified)		Foreign government do. . .	
		Railway and other debentures and debenture stocks	
		Do. shares (preference and ordinary) . .	
		House property	
		Other investments (to be specified) . . .	
		Loans upon personal security	
		Agents' balances	
		Outstanding premiums	
		Do. interest	
		Cash:	
		On deposit . . . . . £	
		In hand and on current account . .	
		Other assets (to be specified)	
£		£	

* NOTE.—These items are included in the corresponding items in the First Schedule.

THIRD SCHEDULE.

Revenue Accounts of the for the year ending

(No. 1.) LIFE ASSURANCE ACCOUNT.

(Date.)		£	(Date.)		£
	Amount of life assurance fund at the beginning of the year			Claims under life policies (after deduction of sums re-assured)	
	Premiums, after deduction of re-assurance premiums			Surrenders	
	Consideration for annuities granted			Annuities	
	Interest and dividends			Commission	
	Other receipts (accounts to be specified)			Expenses of management	
				Other payments (accounts to be specified)	
				Amount of life assurance fund at the end of the year, as per Fourth Schedule	

NOTE.—Companies having separate accounts for annuities to return the particulars of their annuity business in a separate statement.

(No. 2.) FIRE ACCOUNT.

	£		£
Amount of fire insurance fund at the beginning of the year		Losses by fire after deduction of re-assurances	
Premiums received, after deduction of re-assurances		Expenses of management	
Other receipts to be specified		Commission	
		Other payments to be specified	
		Amount of fire insurance fund at the end of the year, as per Fourth Schedule	

NOTE.—When marine or any other branch of business is carried on, the income and expenditure thereof to be in like manner stated in a separate account.

(No. 3.) PROFIT AND LOSS ACCOUNT.

	£		£
Balance of last year's account		Dividends and bonuses to shareholders	
Interest and dividends not carried to other accounts		Expenses not charged to other accounts	
Profit realised (accounts to be specified)		Loss realised (accounts to be specified)	
Other receipts		Other payments	
		Balance as per Fourth Schedule	

NOTE.—This account is not required if the items have been incorporated in the other accounts of this schedule.

FOURTH SCHEDULE.

Balance sheet of the on the , 18 .

Liabilities.	£ s. d.	£ s. d.	Assets.	£ s. d.	£ s. d.
Shareholders' capital			Mortgages on property within the United Kingdom		
General reserve fund (if any)			Do do. out of the United Kingdom		
Life assurance fund *			Loans on the company's policies		
Annuity fund (if any) *			Investments:		
Fire fund			In British Government securities		
Marine fund			Indian and Colonial do.		
Profit and loss (if any)			Foreign do.		
Other funds, if any, to be specified			Railway and other debentures and debenture stocks		
		£	Do. shares (preference and ordinary)		
	£ s. d.		House property		
Claims under life policies admitted but not yet paid *			Other investments (to be specified)		
Outstanding fire losses			Loans upon personal security		
Do. marine do.			Agents' balances		
Other sums owing by the company (accounts to be specified)			Outstanding premiums		
			Do. interest		
			Cash:		
			On deposit £		
			In hand and on current account		
			Other assets (to be specified)		
		£			£

* If the life assurance fund is, in accordance with section 4 of this Act, a separate trust fund for the sole security of the life policy-holders, a separate balance-sheet for the life branch may be given in the form contained in Schedule 2. In other respects the company is to observe the above form. See also note to Second Schedule.

FIFTH SCHEDULE.

STATEMENT RESPECTING THE VALUATION OF THE LIABILITIES UNDER LIFE POLICIES AND ANNUITIES OF THE , TO BE MADE BY THE ACTUARY.

(The answers should be numbered to accord with the numbers of the corresponding questions.)

1. The date up to which the valuation is made.

2. The principles upon which the valuation and distribution of profits among the policy-holders are made, and whether these principles were determined by the instrument constituting the company, or by its regulations or bye-laws, or otherwise.

3. The table or tables of mortality used in the valuation.

4. The rate or rates of interest used in the calculations.

5. The proportion of the annual premium income, if any, reserved as a provision for future expenses and profits. (If none, state how this provision is made.)

6. The consolidated revenue account since the last valuation, or, in case of a company which has made no valuation, since the commencement of the business. (This return should be made in the form annexed.)

7. The liabilities of the company under life policies and annuities at the date of the valuation, showing the number of policies, the amount assured, and the amount of premiums payable annually under each class of policies, both with and without participation in profits; and also the net liabilities and assets of the company, with the amount of surplus or deficiency (These returns should be made in the forms annexed.)

8. The time during which a policy must be in force in order to entitle it to share in the profits.

9. The results of the valuation, showing—

(1.) The total amount of profit made by the company.

(2.) The amount of profit divided among the policy-holders, and the number and amount of the policies which participated.

(3.) Specimens of bonuses allotted to policies for 100*l.* effected at the respective ages of 20, 30, 40, and 50, and having been respectively in force for five years, ten years, and upwards, at intervals of five years respectively, together with the amounts apportioned under the various modes in which the bonus might be received.

APPENDIX VIII.

(FORM referred to under heading No. 6 in the Fifth Schedule.)

Consolidated Revenue Account of the for years commencing and ending .

	£ s. d.		£ s. d.
Amount of funds on , 18 , the beginning of the year		Claims under policies (after deduction of sums re-assured)	
Premiums (after deduction of re-assurance premiums)		Surrenders	
Consideration for annuities granted		Annuities	
Interest and dividends		Commission	
Other receipts (accounts to be specified) . . .		Expenses of management	
		Dividends and bonuses to shareholders (if any) . .	
		Other payments (accounts to be specified). . .	
		Amount of funds on , 18 , the end of the period, as per First (or Third) Schedule . .	
£		£	

(FORM referred to under heading No. 7 in Fifth Schedule.)

SUMMARY and VALUATION of the POLICIES of the as at 18 .

DESCRIPTION OF TRANSACTIONS.	PARTICULARS OF THE POLICIES FOR VALUATION.				VALUATION.			
					Value by the Table, Interest per cent.			
	Number of policies.	Sums assured and bonuses.	Office yearly premiums.	Net yearly premiums, if ascertained.	Sums assured and bonuses.	Office yearly premiums.	Net yearly premiums, if computed.	Net liability
ASSURANCES.								
I. *With participation in profits.*								
For whole term of life								
Other classes (to be specified)								
Extra premiums payable								
Total Assurances with profits . .								
II. *Without participation in profits.*								
For whole term of life								
Other classes (to be specified)								
Extra premiums payable								
Total Assurances without profits . .								
Total assurances								
Deduct re-assurances								
Net amount of assurances . . .								
Adjustments, if any								
ANNUITIES.								
Immediate								
Other classes (to be specified)								
Total of the results								

The term "extra premium" in this Act shall be taken to mean the charge for any risk not provided for in the minimum contract premium. If policies are issued in or for any country at rates of premium deduced from tables other than the European mortality tables adopted by the company, separate schedules similar in form to the above must be furnished.

APPENDIX VIII.

(FORM referred to under heading No. 7 in Fifth Schedule.)

VALUATION BALANCE SHEET of as at 18 .

Dr.	£	Cr.	£
To net liability under Assurance and Annuity transactions (as per summary statement provided in Schedule 5) . . .		By life assurance and annuity funds (as per balance sheet under Schedule 2 or 4) . .	
To surplus, if any . . .		By deficiency, if any . . .	

SIXTH SCHEDULE.

STATEMENT OF THE LIFE ASSURANCE AND ANNUITY BUSINESS OF THE ON THE 18 .

(The answers should be numbered to accord with the numbers of the corresponding questions. Statements of re-assurance corresponding to the statements in respect of assurances, under headings 2, 3, 4, 5, and 6, are to be given.)

1. The published table or tables of premiums for assurances for the whole term of life which are in use at the date above mentioned.

2. The total amount assured on lives for the whole term of life, which are in existence at the date above mentioned, distinguishing the portions assured with and without profits, stating separately the total reversionary bonuses and specifying the sums assured for each year of life from the youngest to the oldest ages.

3. The amount of premiums receivable annually for each year of life, after deducting the abatements made by the application of bonuses, in respect of the respective assurances mentioned under heading No. 2, distinguishing ordinary from extra premiums.

4. The total amount assured under classes of assurance business, other than for the whole term of life, distinguishing the sums assured under each class, and stating separately the amount assured with and without profits, and the total amount of reversionary bonuses.

5. The amount of premiums receivable annually in respect of each such special class of assurances mentioned under heading No. 4, distinguishing ordinary from extra premiums.

6. The total amount of premiums which has been received from the commencement upon all policies under each special class mentioned under heading 4 which are in force at the date above mentioned.

7. The total amount of immediate annuities on lives, distinguishing the amounts for each year of life.

8. The amount of all annuities other than those specified under heading

No. 7, distinguishing the amount of annuities payable under each class, the amount of premiums annually receivable, and the amount of consideration money received in respect of each such class, and the total amount of premiums received from the commencement upon all deferred annuities.

9. The average rate of interest at which the life assurance fund of the company was invested at the close of each year during the period since the last investigation.

10. A table of minimum values, if any, allowed for the surrender of policies for the whole term of life and for endowments and endowment assurances, or a statement of the method pursued in calculating such surrender values, with instances of its application to policies of different standing and taken out at various interval ages from the youngest to the oldest.

Separate statements to be furnished for business at other than European rates, together with a statement of the manner in which policies on unhealthy lives are dealt with.

THE LIFE ASSURANCE COMPANIES ACT, 1872.

35 & 36 VICT. CAP. 41.

An Act to amend the Life Assurance Companies Acts, 1870 *and* 1871.

[*6th August*, 1872.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Deposit by company in Court of Chancery.

1. Whereas by the provisions of the "Life Assurance Companies Acts, 1870 and 1871" (*l*), a life assurance company is required to pay a sum of money into the Court of Chancery by way of deposit, and the certificate of incorporation of such company is not to be issued unless such deposit has been made, and such deposit is to be returned to the company as soon as its life assurance fund amounts to the sum therein mentioned: and doubts have arisen as to the construction of the said provisions, and it is expedient to remove such doubts; be it therefore enacted as follows:

The said deposit may be made by the subscribers of the memorandum of association of the company, or any of them, in the name of the proposed company, and such deposit upon the incorporation of the company shall be deemed to have been made by and to be part of the assets of the company.

The said deposit shall, until returned to the company, be deemed to form part of the life assurance fund of the company, and shall be subject to the provisions of section four of the Life Assurance Companies Act, 1870, accordingly. The Board of Trade may from time to time make, and when made revoke, alter, or add to, rules with respect to the payment and repayment of the said deposit, the investment of or dealing with the same, the deposit of stocks or securities in lieu of money, and the

(*l*) The Life Assurance Companies Act, 1871 (33 & 34 Vict. c. 58), has not been printed. It amended §§ 3 and 25 of the Act of 1870 in the manner mentioned in the notes to thos sections.

APPENDIX VIII.

payment of the interest or dividends from time to time accruing due on any such investment, stocks, or securities in respect of such deposit. Any rules made in pursuance of this section shall have effect as if they were enacted in this Act, and shall be laid before Parliament within three weeks after they are made, if Parliament be then sitting, or if not, within three weeks after the beginning of the then next session of Parliament (*ll*).

Separation of life funds.

2. Whereas, by section four of the Life Assurance Companies Act, 1870, it is enacted that, "In the case of a company established after the passing of this Act, transacting other business besides that of life assurance, a separate account shall be kept of all receipts in respect of the life assurance and annuity contracts of the company, and the said receipts shall be carried to and form a separate fund, to be called the life assurance fund of the company, and such fund shall be as absolutely the security of the life policy and annuity holders as though it belonged to a company carrying on no other business than that of life assurance, and shall not be liable for any contracts of the company for which it would not have been liable had the business of the company been only that of life assurance;" and further provisions were made by the same section, with respect to the application of the above-recited part of the said section to existing companies, and doubts have arisen with respect to the construction of the said provisions, and it is expedient to remove such doubts; be it therefore enacted,

That the portion of section four of the Life Assurance Companies Act, 1870, above recited shall apply to every company established before the passing of that Act, provided that the Life Assurance Companies Act, 1870, and this Act shall not diminish the liability of the life assurance fund for any contracts of the company entered into before the passing of the Life Assurance Companies Act, 1870.

Deposit of statement and abstract required by 33 & 34 Vict. c. 61, § 10.

3. Whereas by section ten of the Life Assurance Companies Act, 1870, it is provided that, "Every annual statement so deposited after the next investigation shall be accompanied by a printed copy of the abstract required to be made by section seven," be it therefore enacted that the words "next investigation" shall be construed to mean the first investigation after the passing of the said Act.

The Board of Trade shall lay before Parliament any statement or abstract of report which is deposited with them by any company, and purports to be in pursuance of the Life Assurance Companies Act, 1870, although the Board are of opinion that it is not such a statement or abstract as is required to be prepared by that Act.

Winding up of subsidiary company to be ancillary to winding up of principal company.

4. Where the business or any part of the business of a life assurance company has, either before or after the passing of this Act, been transferred to another company under an arrangement in pursuance of which such first-mentioned company (in this Act called the subsidiary company), or the creditors thereof, has or have claims against the company to which such transfer was made (in this Act called the principal company), then if such principal company is being wound up by or under the supervision of the Court, either at or after the passing of this Act, the Court shall (subject as hereinafter mentioned) order the subsidiary company to be wound up in conjunction with the principal company, and may, by the same or any subsequent order, appoint the same person to be liquidator for the two

(*ll*) See the rules, *infra*, pp. 1615 *et seq.*

companies, and make provision for such other matters as may seem to the Court necessary, with a view to such companies being wound up, as if they were one company; and the commencement of the winding up of the principal company shall, save as otherwise ordered by the Court, be the commencement of the winding up of the subsidiary company; the Court, nevertheless, shall have regard, in adjusting the rights and liabilities of the members of the several companies between themselves, to the constitution of such companies, and to the arrangements entered into between the said companies in the same manner as the Court has regard to the rights and liabilities of different classes of contributories in the case of the winding up of a single company, or as near thereto as circumstances admit.

Where any subsidiary company, or company alleged to be subsidiary, is not in process of being wound up at the same time as the principal company to which it is subsidiary, the Court shall not direct such subsidiary company to be wound up, unless, after hearing all objections (if any) that may be urged by or on behalf of such company against its being wound up, the Court is of opinion that such company is subsidiary to the principal company, and that the winding up of such company in conjunction with the principal company is just and equitable.

Where any subsidiary company and principal company are being wound up by different branches of the Court, the Court to which appeals from such branches lie shall make an order directing in which branch the winding up of such companies is to be carried on, and the necessary proceedings shall be taken for carrying such order into effect.

An application may be made in relation to the winding up of any subsidiary company, in conjunction with a principal company, by any creditor of, or person interested in, such principal or subsidiary company.

Where a company stands in relation of a principal company to one company, and in the relation of a subsidiary company to some other company, or where there are general companies standing in the relation of subsidiary companies to one principal company, the Court may deal with any number of such companies together or in separate groups, as it thinks most expedient, upon the principles laid down in this section (*m*).

Valuation of annuities and policies.

5. Where a life assurance company is being wound up by the Court, or subject to the supervision of the Court, or voluntarily, the value of every life annuity and life policy requiring to be valued in such winding up shall be estimated in manner provided by the first schedule to this Act; but this section shall not apply to any company the winding up of which has commenced before the passing of this Act, unless the Court having cognisance of the winding up so order, which order that Court is hereby empowered to make if it think expedient so to do, on the application of any person interested in the winding up of such company (*n*).

Rules in First and Second Schedules to be Rules of Court.

6. The rules in the first and second schedules to this Act shall be of the same force as if they were rules made in pursuance of the one hundred and seventieth, one hundred and seventy-first, and one hundred and seventy-third sections of the "Companies Act, 1862," as the case may be, and may be altered in manner provided by the said sections, and rules may be made under the said sections for the purpose of carrying into effect the provisions of this Act with respect to the winding up of companies.

(*m*) See *ante*, pp. 868, 869. (*n*) See *ante*, pp. 1019, 1020.

APPENDIX VIII.

Regulations as to novations by policy-holders.

7. Where a company, either before or after the passing of this Act, has transferred its business to or been amalgamated with another company, no policy-holder in the first-mentioned company, who shall pay to the other company the premiums accruing due in respect of his policy, shall by reason of any such payment made after the passing of this Act, or by reason of any other act done after the passing of this Act, be deemed to have abandoned any claim which he would have had against the first-mentioned company on due payment of premiums to such company, or to have accepted in lieu thereof the liability of the other company, unless such abandonment and acceptance have been signified by some writing signed by him or by his agent lawfully authorised (*o*).

Construction and short title.

8. This Act shall be construed as one with the Life Assurance Companies Acts, 1870 and 1871; and those Acts and this Act may be cited together as "The Life Assurance Companies Acts, 1870 to 1872;" and this Act may be cited as "The Life Assurance Companies Act, 1872."

FIRST SCHEDULE.

Rule for Valuing an Annuity.

An annuity shall be valued according to the tables used by the company which granted such annuity at the time of granting the same, and where such tables cannot be ascertained or adopted to the satisfaction of the Court, then according to the table known as the Government Annuities Experience Table, interest being reckoned at the rate of four per centum per annum.

Rule for Valuing a Policy.

The value of the policy is to be the difference between the present value of the reversion in the sum assured on the decease of the life, including any bonus or addition thereto made before the commencement of the winding up, and the present value of the future annual premiums.

In calculating such present values, the rate of interest is to be assumed as being four per centum per annum, and the rate of mortality as that of the tables known as the Seventeen Offices Experience Tables.

The premium to be calculated is to be such premium as according to the said rate of interest and rate of mortality is sufficient to provide for the risk incurred by the office in issuing the policy, exclusive of any addition thereto for office expenses and other charges.

SECOND SCHEDULE.

Where an assurance company is being wound up by the Court or subject to the supervision of the Court, the *official* liquidator (*oo*) in the case of all persons appearing by the books of the company to be entitled to or interested in policies granted by such company, for life assurance, endowment, annuity, or other payment, is to ascertain the value of such policies, and give notice of such value to such persons, and any person to whom notice is so given shall be bound by the value so ascertained unless he gives notice of his intention to dispute such value in manner and within a time to be prescribed by a rule or order of the Court (*p*).

(*o*) See *ante*, p. 371.

(*oo*) The title "official" liquidator has been abolished as to England and Wales, see Comp. (Winding-up) Act, 1890, § 4 (3), *ante*, p. 1374.

(*p*) See *ante*, p. 1020.

LIFE ASSURANCE COMPANIES (PAYMENT INTO COURT) ACT, 1896.

59 VICT. CAP. 8.

An Act to enable Life Assurance Companies to pay money into Court in certain cases. [21*st May*, 1896.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. This Act may be cited as the Life Assurance Companies (Payment into Court) Act, 1896. Short title.

2. In this Act— Interpretation.

The expression "life assurance company" means any corporation, company, or society carrying on the business of life assurance, not being a society registered under the Acts relating to friendly societies;

The expression "life policy" includes any policy not foreign to the business of life assurance.

3. Subject to rules of Court any life assurance company may pay into the High Court, or where the head office of the company is situated within the jurisdiction of the Chancery Court of the County Palatine of Lancaster either into that Court or into the High Court, any moneys payable by them under a life policy in respect of which, in the opinion of their board of directors, no sufficient discharge can otherwise be obtained. Power to pay money into Court.

4. The receipt or certificate of the proper officer shall be a sufficient discharge to the company for the moneys so paid into Court, and such moneys shall, subject to the rules of Court, be dealt with according to the orders of the High Court or the Palatine Court, as the case may be. Receipt of officer sufficient discharge.

5. This Act does not extend to Scotland. Extent of Act.

THE LIFE ASSURANCE COMPANIES ACTS, 1870 TO 1872.

BOARD OF TRADE RULES.

The following rules have been issued by the Board of Trade under the above-mentioned Acts:—

1. In these rules the term "the Court" means the High Court of Chancery in England, and the word "company" means a company as the same is defined in the second section of the Life Assurance Companies Act, 1870.

2. Where any company is required in pursuance of the Life Assurance Companies Acts, 1870 to 1872, to deposit the sum of twenty thousand pounds with the Accountant-General of the Court of Chancery, the said company, or the subscribers of the memorandum of association of the said company, or any of them as the case may be (in these rules referred to as the promoters), may make application to the Board of Trade for a warrant,

and the Board of Trade may thereupon issue their warrant to the promoters for such payment into Court, which warrant shall be a sufficient authority for the company or persons therein named to pay the money therein mentioned into the Bank of England, in the name and with the privity of the said Accountant-General, and for that officer to issue directions to such Bank to receive the same, to be placed to his account there, *ex parte* the company mentioned in such warrant according to the method prescribed by statute, or general rules or orders of Court, or otherwise, for the time being in force respecting the payment of money into the said Court, and without fee or reward.

Provided that in lieu, wholly or in part of the payment of money, the promoters may bring into Court as a deposit an equivalent sum of bank annuities, or of any stocks, funds, or securities in which cash under the control of the Court is for the time being permitted to be invested, or of Exchequer bills (the value thereof being taken at the price at which the promoters originally purchased the same as appearing by the broker's certificate of that purchase), and in that case the Board of Trade shall vary their warrant accordingly by directing the transfer or deposit of such amount of stocks, funds, securities, or Exchequer bills by the persons therein named into the name or to the account of the said Accountant-General in trust to attend the orders of the Court, *ex parte* the company mentioned in such warrant.

3. At any time when the office of the Accountant-General of the Court of Chancery is closed a deposit under these rules may nevertheless be made in the manner and subject to the regulations provided with respect to deposits by companies by section 88 of the Lands Clauses Consolidation Act, 1845.

4. Where money is so paid into the Court of Chancery the Court may, on the application of the company, or the persons named in the warrant of the Board of Trade, or of the majority or survivors of such persons, order that the same be invested in such stocks, funds, or securities as the applicants desire and the Court thinks fit.

5. In the subsequent provisions of these rules the term "the deposit fund" means the money deposited, or the stocks, funds, or securities in which the same is invested, or the bank annuities, stocks, funds, securities, or Exchequer bills, transferred or deposited as the case may be, and the term "the depositors" means the company or persons named in the warrant of the Board of Trade authorising the deposit or the majority or survivors of those persons, their executors, administrators, or assigns.

6. The Court shall, on the application o the depositors, order the deposit fund to be paid, transferred, or delivered out to the applicants, or as they direct, so soon as it is proved to the satisfaction of the Court that the life assurance fund of the company in respect of which the deposit is made, accumulated out of premiums paid to the said company, amounts to the sum of forty thousand pounds.

7. The depositors shall be entitled to receive payment of the interest or dividends from time to time accruing on or in respect of the deposit while in Court. And the Court may from time to time on the application of the depositors make such order as may seem fit respecting the payment of the interest or dividends accordingly.

8. The issuing in any case of any warrant or certificate relating to deposit or to the deposit fund, or any error in any such warrant or

certificate, or in relation thereto, shall not make the Board of Trade or the person signing the warrant or certificate on their behalf in any manner liable for or in respect of the deposit fund or the interest or dividends accruing on the same or any part thereof respectively.

9. Any application under these rules to the Court of Chancery shall be made in a summary way by petition.

W. R. MALCOLM.

Board of Trade,
28th August, 1872.

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TO THE ACTS, RULES, AND ORDERS PRINTED IN THE APPENDIX.

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References to the Rules of 1862 *are printed in* ordinary type.

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